



DOCUMENTS DEPARTMENT

CLOSED  
STACKS



SAN FRANCISCO  
PUBLIC LIBRARY

GOVERNMENT INFORMATION CENTER  
SAN FRANCISCO PUBLIC LIBRARY

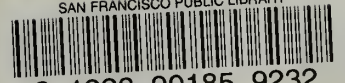
REFERENCE BOOK

*Not to be taken from the Library*

DOCUMENTS DEPARTMENT

JAN 24 1969

SAN FRANCISCO PUBLIC LIBRARY



3 1223 90185 9232









DOCUMENTS DEPARTMENT

MAY 5 1955

SAN FRANCISCO PUBLIC LIBRARY

**ANNUAL REPORT**  
**OF**  
**CITY ATTORNEY**  
**OF**  
**CITY AND COUNTY OF SAN FRANCISCO**  
**JULY 1, 1956 - JUNE 30, 1957**

Dion R. Holm  
City Attorney



## TABLE OF CONTENTS

---

	Page
City Attorney's Letter to Mayor .....	1
Litigation Department .....	2
A. Tort Litigation .....	2
1. Municipal Railway .....	3
2. Other Departments .....	4
(a) Public Works Department .....	4
Statement for 10-year period .....	5
Sidewalk Cases .....	6
(b) Governmental Departments other than Department of Public Works .....	7
Recapitulation of Statistics on Tort Litigation .....	7
B. Other Litigation .....	8
C. Appellate Litigation .....	8
Public Utilities Department .....	9
A. Airport .....	10
B. Hetch Hetchy .....	11
C. Bureau of Light, Heat and Power .....	11
D. Water Department .....	11
E. Municipal Railway .....	13
Rate Department .....	13
A. Gas .....	14
B. Electric .....	14
C. Telephone .....	14
D. Transportation .....	15
Legal Opinions Rendered to City Departments .....	15
Contract Preparation and Approval .....	16
Legislative Department .....	16
Redevelopment Agency .....	17
Parking Authority .....	18
Franchise Matters .....	19
Abatement and Condemnation of Public Nuisances .....	20
Public Welfare Department .....	20
Workmen's Compensation Litigation .....	21
Conclusion .....	22

SAN FRANCISCO  
PUBLIC LIBRARY  
DOCUMENTS DEPT.

\*352.9

S9 52 ar

[ 1956-60 ]

VRENCES S. MANA  
CHIEF DEPUTY CITY ATTORNEY

MOND P. BERGEROT  
CHIEF TRIAL DEPUTY

DEPUTY CITY ATTORNEYS

NORMAN SANFORD WOLFF

JOSEPH F. MURPHY

C. WESLEY DAVIS

VIRL BENNEHOFF

BERNARD J. WARD

GEORGE E. BAGLIN

THOMAS J. BLANCHARD

WILLIAM F. BOURNE

DONALD J. KROPP

JOHN ELMER BARRICKLO

THOMAS A. TOOMEY, JR.

JEROME COHEN

AGNES O'BRIEN SMITH

FRANK J. NEEDLES

RICHARD SAVERI

DION R. HOLM  
CITY ATTORNEY  
CITY HALL

SAN FRANCISCO 2, CALIFORNIA

HEMLOCK 1-1322

September 13, 1957

THOMAS M. O'CONNOR  
PUBLIC UTILITIES COUNSEL

DEPUTY CITY ATTORNEYS

GEORGE P. AGNOST

MORLEY GOLDBERG

WILLIAM E. MULLINS

ROBERT M. DESKY

SAMUEL E. YEE

RAYMOND J. REYNOLDS

PATRICK R. KELLY

EMMET B. KEEFFE

JOHN J. TAHENY, JR.

THEODORE J. LITTLE

MCMORRIS M. DOW

THEODORE F. BOFINGER

WILLIAM J. BRAUN

PAUL J. DI NOIA

ORVILLE I. WRIGHT

PAUL L. BECK

CHIEF VALUATION AND  
RATE ENGINEER

The Honorable George Christopher  
Mayor of the City and County of San Francisco  
San Francisco, California

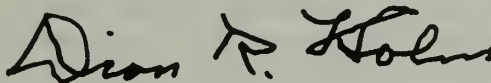
Dear Mayor Christopher:

Pursuant to your request of August 22, 1957,  
I am forwarding to you herewith my report describing  
the activities of the Office of the City Attorney for  
the fiscal year commencing July 1, 1956 and ending  
June 30, 1957.

It has been my endeavor in the preparation  
of this report, without undue detail, to give you a  
complete picture of the varied activities carried on  
by my office.

I am sure that you will note the great  
increase in the work of the office both in the volume  
of matters handled and in the growing complexity of  
the legal problems confronting the city in carrying  
out its governmental and proprietary functions.

Yours truly,



DION R. HOLM  
City Attorney





Annual Report  
of  
City Attorney  
Dion R. Holm

July 1, 1956 - June 30, 1957

Under Section 26 of the Charter, the City Attorney is the chief legal officer of the City and County of San Francisco and must represent the City and County of San Francisco in all actions and proceedings in which it may be legally interested, or for or against the city and county or any officer of the city and county.

The City Attorney must also prepare and approve as to form all ordinances, bonds and contracts of the City and County of San Francisco.

The City and County of San Francisco is both a city and a county. The City Attorney additionally performs the duties ordinarily performed by the County Counsel in all matters where the City and County of San Francisco is acting as a county.

Detailed herein is a statement of the activities of the City Attorney's office for the fiscal year July 1, 1956 to June 30, 1957.

LITIGATION DEPARTMENT

A substantial amount of the work of the City Attorney each year involves litigation in which the city is either a party defendant or a party plaintiff. Because of the varied activities of the city and county in the operation of the Municipal Railway and in all of its governmental activities, the City and County of San Francisco is involved in more litigated matters than any other individual or corporate body in San Francisco. The litigation in which the City and County of San Francisco is involved falls into several categories, as set forth below.

A. TORT LITIGATION

Of the litigated matters in which the city and county is a party, the greatest volume involve tort cases where the city and county is named as a defendant for personal injury or property damage alleged to have been received from the operation of the Municipal Railway or from governmental activities wherein governmental immunity has been waived under the Public Liability Act of 1923 or other statutes.

In the preparation of such matters for trial extensive work must be done by the members of the staff. This particularly involves a review of the investigation, arranging for medical reports to determine the extent of injury, and the taking of depositions of the parties to said actions.



During the fiscal year 1956-1957 the following number of depositions were taken:

Municipal Railway cases .....	456
Non-Railway cases .....	<u>168</u>
Total	624

1. Municipal Railway

The Municipal Railway is accountable for the greatest volume of tort litigation handled by the City Attorney's office each year. The following table illustrates the work done for that department during the last fiscal year:

Actions filed .....	451
Actions tried, settled or dismissed .....	443
Actions pending at the end of the fiscal year .....	715
Prayers of actions pending at the end of the fiscal year ....	\$20,011,359
Claims filed against Municipal Railway .....	2,673

In addition to the foregoing, 1446 non-litigated claims were settled by the Claims Department of the Public Utilities Commission after rendition of services in regard thereto by this office. In respect to each of these claims, except those under \$100, a review was made by this office and a valuation made for the purpose of settlement. Written approval of each settlement was given to the Public Utilities Commission and the Controller. Releases and other closing papers were also approved in each instance.

Of the 443 litigated cases which were disposed of as referred to above, the total of the prayers in said cases was \$8,354,746 and the amount paid by the city in the disposition of said 443 cases was \$695,524. The total payments were 8.3% of the prayers. Following is a breakdown of the cases referred to above:

	<u>Number</u>	<u>Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
<u>Judgments:</u>				
Paid	90	\$1,447,242	\$217,531	15.0
Won or dismissed	<u>111</u>	<u>1,148,789</u>	<u>0</u>	0
	201	\$2,596,031	\$217,531	
Litigated Settlements:	<u>242</u>	<u>5,758,715</u>	<u>477,993</u>	8.4
Total Judgments and Litigated Settlements	<u>443</u>	<u>\$8,354,746</u>	<u>\$695,524</u>	8.3





Numerous street car, bus and trolley coach operators were represented at coroner's hearings and hearings in the Criminal Division of the Municipal Court where there was the probability of substantial damage claims being subsequently filed against the city and county.

Periodically during the fiscal year this office assisted at meetings of management, operations and personnel of the Municipal Railway and participated in their discussions and conferences which concerned matters of safety precautions, equipment, public relations and training of personnel.

## 2. Other Departments

Tort litigation involving departments other than Municipal Railway arises generally from the provisions of the Public Liability Act of 1923 and other statutes wherein governmental immunity has been waived in actions of a municipality in its governmental capacity, as distinguished from actions in its proprietary capacity. The trend generally in such actions has been for greater liberality in interpretation of the statutes by the courts and greater liberality in the actions of judges and juries in the award of damages, so as an inevitable consequence the number of such actions filed against municipalities generally has been ever on the increase. While such actions may involve practically all governmental departments of the City and County of San Francisco, the greater number arise from the operations of the Department of Public Works, which is charged with the responsibility of maintaining our streets and sidewalks, sewers and other such public works, and for that reason a detailed statement is given as to the legal actions under the Public Liability Act of 1923 involving the Public Works Department.

During the said fiscal year there were 729 claims filed against all departments of the city and county exclusive of the Municipal Railway.

### (a) Public Works Department

During the fiscal year 78 cases involving the Department of Public Works were disposed of by the City Attorney's office, either through settlement or court action. These cases involved actions arising from the condition of the sidewalks, curbs or roadways, sewers or equipment of the Public Works Department. Following is a breakdown of the cases disposed of and the amounts paid:

<u>Number of Cases Disposed of</u>	<u>Total Prayers</u>	<u>Total Amount Paid</u>	<u>Percentage</u>
78	\$ 1,750,051	\$ 49,231	2.8

To illustrate the general increase in such litigation under the Public Liability Act of 1923 involving the Department of Public Works, I am including herewith a statement for a 10-year period of the number of matters terminated in each fiscal year for the Department of Public Works, which indicates that in such period the volume of litigation has practically doubled.



TABULATION OF NUMBER OF CASES OF DEPARTMENT OF PUBLIC WORKS TERMINATED  
BY THE CITY DURING THE PERIOD NOVEMBER 3, 1947 THROUGH JUNE 30, 1957,  
AND OF CASES PENDING AT VARIOUS DATES DURING THE PERIOD OCTOBER 1948  
THROUGH DECEMBER 1956

CIVIL SUITS TRIED, SETTLED, DISMISSED OR OTHERWISE CLOSED

<u>Period</u>	<u>Suits Terminated</u>	<u>Total Prayers</u>	<u>Total Payments</u>	<u>Percentage</u>
11/3/47 - 10/2/48	35	\$ 308,701	\$ 15,159	4.9
7/1/48 - 6/30/49	37	506,608	13,586	2.7
7/1/49 - 6/30/50	24	202,976	19,522	9.6
7/1/50 - 6/30/51	58	822,319	24,016	2.9
7/1/51 - 6/30/52	54	808,767	20,528	2.5
7/1/52 - 6/30/53	83	1,099,336	79,234	7.2
7/1/53 - 6/30/54	73	1,421,917	104,246	7.3
7/1/54 - 6/30/55	67	1,474,139	35,586	2.4
7/1/55 - 6/30/56	58	1,229,799	37,841	3.1
7/1/56 - 6/30/57	<u>78</u>	<u>1,750,051</u>	<u>49,231</u>	2.8
Total - 10 yr. period	567	\$9,624,613	\$398,949	4.1

CASES PENDING

<u>Date</u>	<u>Suits Pending</u>	<u>Total Prayers</u>
October, 1948	91	\$ 1,321,573
October, 1949	124	1,801,036
October, 1951	132	2,584,002
January, 1953	139	2,645,162
December, 1953	151	3,477,165
January, 1955	155	3,647,526
February, 1956	177	4,126,526
December, 1956 *	163 *	4,056,493 *

\*The 163 cases pending as of December 31, 1956 involved the following types of cases

<u>Type of Case</u>	<u>Number of Cases</u>	<u>Prayers</u>
Sidewalk	110	\$2,554,066
Curb or Roadway	38	642,728
Equipment, Sewers, and Miscellaneous	<u>15</u>	<u>859,699</u>
	163	\$4,056,493





## Sidewalk Cases

More than 50 per cent of the cases in which the Department of Public Works is involved arise from actions wherein it is alleged that there is a dangerous and defective condition of the sidewalk, causing injury to a pedestrian.

In the past years I have made it a practice to report separately on the status of sidewalk cases against the city and county. I am happy to report that the city has been most successful in the defense of such sidewalk cases brought against it for damages as the result of an alleged dangerous and defective condition of its sidewalks under the Public Liability Act of 1923.

As I have indicated to you in the past, there has been a tendency in recent years in this type of case, both among the courts and the juries, to become increasingly liberal in the determination of the question of liability of a municipality for damages and in the amount of awards granted in such cases.

A review of last year's activities in regard to sidewalk cases indicates that the amount paid out by the City and County of San Francisco has been held to a minimum. Following is a summary as to sidewalk cases tried for the year 1956-1957:

<u>Number of Cases</u>	<u>Amount of Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
45	\$1,018,968	\$31,745	3.1

As I have indicated in the past, our office has been pioneering the movement to place the ultimate liability in this type of case upon the abutting property owner in the situation where the abutting property owner has made a special use of the sidewalk, such as for a sidewalk elevator, sewer vent, skylight, depressed driveway, or other such use apart from the normal and customary use of sidewalks, and as a result of such special use a dangerous and defective condition of the sidewalk is created or maintained.

In such a situation the courts have indicated that both the municipality and the abutting property owner are liable to the injured party, and the question of whether there is a right of indemnification of the municipality against the property owner for any damages which the municipality may be compelled to pay in such a situation has not yet been decided by the courts. It has been the practice of the city and county in each such case to file a cross-complaint against the abutting property owner in the action filed against the city. Thus the city has placed itself in a position where it has refused to contribute to the settlement of such cases, forcing the property owner to bear the full responsibility, or it has been able to secure very favorable and advantageous settlements where the city has paid only a nominal amount and the greater burden has been assumed by the abutting property owner. There are several cases involving the city and county presently pending on appeal in which the question of whether



the city is entitled to full indemnification from the property owner is involved and I expect a favorable determination in this matter.

(b) Governmental Departments Other Than Department of Public Works

While the tort litigation in which the Department of Public Works is involved represents the largest number of tort actions wherein the city is acting in its governmental capacity, a substantial number of cases arise from the operation of other departments.

While the figures are generally not included here, the same percentage of increase in the volume of litigation involving these departments has been noted as is reflected in the table of litigation involving the Department of Public Works for the past ten years.

The departments involved are Recreation and Park Department, Department of Public Health, Police Department, Fire Department, Real Estate Department, Unified School District, and other such city departments.

A summary of the disposition of the cases of said departments follows:

<u>Department</u>	<u>Number of Cases Disposed of</u>	<u>Total Prayers</u>	<u>Total Amount Paid</u>	<u>Percentage</u>
Police	14	\$178,239	\$23,677	13.3
Recreation & Park	12	214,125	2,125	1.0
Fire	4	65,741	312	.5
Public Health	3	63,548	15,500	24.3
Unified School Dist.	3	35,000	1,403	4.0
Water	3	10,489	0	0
Real Estate	2	31,048	0	0
Light, Heat & Power	1	245	0	0
Youth Guidance	<u>1</u>	<u>3,000</u>	<u>350</u>	11.7
Total	43	\$601,435	\$43,367	7.2

Recapitulation of Statistics on Tort Litigation

<u>Department</u>	<u>Number of Cases</u>	<u>Amount of Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
Public Works	78	\$1,750,051	\$ 49,231	2.8
Other Govern- mental Depts.	<u>43</u>	<u>601,435</u>	<u>43,367</u>	7.2
	121	\$2,351,486	\$ 92,598	3.9
Municipal Ry.	<u>443</u>	<u>8,354,746</u>	<u>695,524</u>	8.3
Total of All Tort Litigation	<u>564</u>	<u>\$10,706,232</u>	<u>\$788,122</u>	7.4





## B. OTHER LITIGATION

Litigation other than the tort litigation reported on above in which the City and County of San Francisco was involved during the fiscal year 1956-1957 generally arose from the activities of the various departments, boards and commissions of the city and county.

Reports as to some of these matters are included in other portions of this annual report under separate headings.

Generally, the litigation arose from the following activities: Eminent Domain actions for the acquisition of private property for public projects, such as the Market-Portola widening, the development of McLaren Park, and for schools; mandate actions against the Civil Service Commission; actions for the refund of taxes illegally or erroneously collected; actions in behalf of the Retirement Board where the city is entitled to reimbursement for medical payments and workmen's compensation benefits paid to a city employee injured in the course and scope of his employment against the third party who caused said injury; actions to sustain the validity of municipal ordinances and to restrain violations of such ordinances; actions arising from the numerous contracts entered into by the city for public improvements and other purposes.

## C. APPELLATE LITIGATION

With the large volume of litigation carried on by the City Attorney's office it is inevitable that a substantial number of such matters involving the City and County of San Francisco would be decided by our appellate courts.

During the fiscal year there were four such cases decided by the Supreme Court of the State of California and thirteen decided by the District Court of Appeal of the State of California.

The most outstanding of the cases decided by our appellate courts during the fiscal year was that of Brooks v. Henderson, 150 A.C.A. 1, which involved the legality of an ordinance passed by the Board of Supervisors permitting the Chief Administrative Officer to be appointed to his position past his retirement age. The ordinance was enacted pursuant to my opinion that it was within the power of the Board of Supervisors to determine which classes of city employees could be excluded from membership in the retirement system. Also involved in the litigation, besides the Chief Administrative Officer, was the Director of the de Young Museum, Dr. Walter Heil, and William Acton, a deputy District Attorney. In the case in question, the District Court of Appeal sustained the validity of the ordinance and upheld my opinion, to the effect that the Board of Supervisors, under the Charter, was empowered to determine which classes of city employees could be excluded from membership in the retirement system.

Other appellate cases in which the City and County of



San Francisco was involved which are noteworthy are:

(1) Prince v. City and County of San Francisco, 48 A.C. 472, which upheld the loyalty oath as a prerequisite to granting a veteran's tax exemption. The taxpayer in said case has filed a petition for a writ of certiorari to the United States Supreme Court.

(2) Hirsch v. City and County of San Francisco, 143 C.A.2d 313, which upheld the legality of an ordinance prepared by the City Attorney's office involving the regulation of merchandising by public outcry. The ordinance was designed to prevent the type of "action sales" which had become prevalent wherein sub-standard merchandise was sold through mass appeal to persons walking along the city streets who were attracted to the place of business by the public outcry.

(3) Aitkenhead v. City and County of San Francisco, 150 A.C.A. 47, wherein the District Court of Appeal reversed a judgment notwithstanding the verdict rendered in favor of the City and County of San Francisco. The trial court rendered a judgment in favor of the city notwithstanding the verdict of the jury of \$7,500, on the ground that the defect was minor as a matter of law. This was reversed by the District Court on appeal.

The 17 cases decided by our appellate courts involved the following departments:

Municipal Railway .....	4
Civil Service Commission .....	2
Department of Public Works .....	2
Assessor's Office .....	2
Board of Supervisors .....	2
School Department .....	2
Planning Commission .....	1
Police Department .....	1
Retirement Board .....	1

#### PUBLIC UTILITIES DEPARTMENT

The Public Utilities Department of this office has had greatly increasing functions, due particularly to the expansion both in scope and number of activities of the San Francisco International Airport, the project for expansion of additional power facilities in the Hetch Hetchy system, and developments with respect to proposals for legislation concerning a California State Water Plan in order to protect, preserve, maintain and further the interests of San Francisco in connection with its water supply system.

Several major items of litigation, with the preparation and research which is indispensable for ultimate success, have been undertaken or defended and will be described below in connection with the work accomplished for the several utility departments.







It should be pointed out that constant consultation with the Public Utilities Commission, the Manager of Utilities and heads of personnel of the various utility departments on the following and many similar matters constantly takes place and solves and succeeds in preventing many legal controversies.

#### A. AIRPORT

During the past fiscal year this office has drafted a number of leases for the Airport. Among the leases prepared were a proposed draft of a new base lease for Pan American Airways and several proposed land leases for airline carriers.

During the past year this office has participated in administrative proceedings before the Civil Aeronautics Board in carrying out the Public Utilities Commission's policy of assuring that San Francisco obtain its fair share of national and international non-stop or direct air routes warranted by its pre-eminent position as an international center of commerce.

During the year the city and county participated in seven different air line route matters before the Civil Aeronautics Board or its Examiner. Polar routes from San Francisco to Tokyo and from San Francisco for direct service to various European cities have been obtained by final decisions in which the city was successful on all issues. Intervention took place in the Dallas to the West Case to obtain new routes from San Francisco to Dallas, Fort Worth, Phoenix, El Paso, Albuquerque, Las Vegas, San Diego and Los Angeles, and a Statement, Exhibits and testimony were presented in extensive hearings at Dallas, Texas. Also this office participated in the American Airlines Application to obtain additional nonstop service between San Francisco and New York. Western Air Lines was aided in obtaining an administrative decision resulting in service from California to Mexico City. The Pacific Northwest Local Service Case was tried in Seattle, Washington, and briefs are now being prepared for the Examiner.

This office has been engaged in the extensive negotiations which have taken place over the last year regarding revision of field use charges at San Francisco International Airport, to the end that airlines would assume their fair share of the costs of operating the Airport and provide fair reimbursement for the expansion of Airport facilities to accommodate jet air transportation as authorized by the \$25,000,000 bond issue. Much legal research and consultation with the Public Utilities Commission, the Manager of Utilities, the Manager of the Airport and other officials preceded and followed each negotiating session with the airlines. The culmination of these negotiations has resulted in a new schedule of rates and charges which schedule has been adopted by the Public Utilities Commission and approved by the Board of Supervisors and is effective as of September 1, 1957. As a part of the result of the negotiations, United Air Lines Lease, which prescribes fixed field use charges, has been modified by an agreement prepared by this office, so that United Air Lines will pay an increased charge equivalent to the new rates and charges until 1962.



In addition to the preparation of this agreement, this office has prepared a similar agreement with Trans World Airlines, not yet executed by Trans World Airlines, and has prepared a form of contract for other airline carriers which incorporates the rates set forth in the schedule of rates and charges for a five-year period.

The connected matter of the action filed by the city against the Western Air Lines to collect approximately a quarter of a million dollars under a prior schedule of rates and charges for common use facilities at the Airport has been thoroughly researched and prepared for early trial. All the sums in controversy have been paid under protest to the city and the legality of the field charges imposed under the former schedule will be determined.

A careful legal study was made and recommendations have been prepared for preservation of city's title and rights in Airport roadways. This office participated in three bus line applications before the State Public Utilities Commission wherein city succeeded in fully reserving that control over service on the Airport which it possesses as a charter city.

Preparation, review and approval of numerous permits and concession agreements and legal interpretation of current agreements and leases were undertaken during the past year and the number and variety of the questions determined reflect the increased activity at the Airport.

#### B. HETCH HETCHY

The project for expansion of Hetch Hetchy facilities in connection with the Canyon and Cherry Power Project has occasioned increased work by this office in preparation and review of various contracts, agreements and other legal arrangements, and in rendering of opinions with respect to a number of legal questions presented.

#### C. BUREAU OF LIGHT, HEAT AND POWER

This office, in an opinion, clarified and established the legal basis for the sale of power by the city to the United States Government at Fort Mason and the rate has been settled for the future by successful negotiations.

#### D. WATER DEPARTMENT

This office prepared, tried and obtained judgment in an action in unlawful detainer against Lowrie Paving Company, Incorporated, to cancel the lease of said company as a quarrying operator near Crystal Springs Reservoir by reason of its conduct in allowing silt to flow into the reservoir during the 1955-1956 winter season. In a similar proceeding wherein Skyline Materials, Inc., another quarrying operator, by lease from the city at





Crystal Springs reservoir, sought declaratory relief against the city to prevent cancellation of its lease, the case was settled when that corporation agreed to observe certain stipulations and construct facilities that would prevent silting of the reservoir.

The city and county has brought an action in eminent domain to obtain the last remaining parcel of land in the watershed of the San Andres Reservoir which is not now owned by the city. A judicial determination that a cause of action was stated has been obtained in said action and the case has been prepared for trial. Also in connection with the Water Department's program to maintain the purity of water in city's reservoirs, this office consulted on actions to be taken to prevent any freeway or other construction on the reservoir watersheds which will prejudice the high standards of domestic water supply observed by the San Francisco Water Department.

This office analyzed 241 water bills introduced in the 1957 session of the Legislature, prepared digests of said bills and conferred with the Public Utilities Commission, the Manager of Utilities and departmental officials in regard to these measures and assisted in preparing recommendations to the Mayor's Legislative Committee. In regard to the important question of preserving the city's water rights and status as a domestic water supplier under any State Water Plan which may be adopted, this office has participated in hearings dealing with the State Water Plan conducted by various state, municipal and civic groups, and in other conferences, and assisted in preparing a policy statement of the city's position.

This office had to deal with the legal aspects of over 100 claims arising from two breaks in the Water Department's mains during the past year, and succeeded in settling practically all of said claims after investigation, analysis, and dealing with the many parties concerned. In addition, 15 suits involving property damage and personal injuries in connection with Water Department activities were tried or settled during the last year.

In connection with eminent domain proceedings, this office processed 31 different actions in the Superior Courts of several counties during the past year on behalf of the Water Department and Hetch Hetchy. These actions were brought by city to acquire further property rights for utility purposes or were brought against the city to acquire its non-operative utility property for other public uses. In the latter type of case every effort has been made to preserve city's interests both as to the prevention of inconsistent uses and the obtaining of fair compensation for any and all interests taken.

Numerous Water Department contracts for pipe installation and for other purposes were reviewed. This office also prepared a number of agricultural and other types of leases in connection with the Water Department properties and held a number of conferences with Water Department officials respecting lease and contract matters.





This office also assisted in the Water Department program to prevent trespassing on reservoir property by the use of appropriate legal proceedings, signs and other legal safeguards to discourage such conduct. Annexation proceedings, formation of special districts and local regulatory ordinances, particularly as to truck operations, also called forth study and negotiations to protect the city's interests in connection with this matter.

#### E. MUNICIPAL RAILWAY

In addition to the personal injury litigation of the Municipal Railway, this office successfully defended in the District Court of Appeal a writ of mandate which had sought to compel cessation of work on the project to remove cable car tracks from Washington Street and to compel restoration of cable car service. A companion suit proceeding in the Superior Court in regard to the same subject matter is currently being defended.

Legal advice and consultation were furnished in regard to the lease which was consummated with the St. Louis Public Service Company for the rental of street cars to replace city's outmoded rolling stock.

A new contract for the carrying of post office employees on the railway and a new contract with the San Francisco Unified School District with respect to bus transportation for school children were prepared; legal opinions and legal advice were given on a number of other matters as requested by the Manager and other officials of the Municipal Railway. Specifications of charges were prepared for the Manager of Utilities and 12 disciplinary proceeding hearings covering railway personnel were attended during the past year.

#### RATE DEPARTMENT

During the fiscal year 1956-1957 this office participated before the California State Public Utilities Commission in many cases pertaining to electric, gas, telephone, transportation and other regulatory matters. There were no rate increases granted during the fiscal year for gas, electric or telephone utilities. The Key System Transit Company applied for an increase in rates and permission to abandon rail service; both were denied.

One significant thing has occurred during the past fiscal year, and that is that one of the large utilities in March of 1956 sold a large issue of bonds at an effective interest rate of 3.35%. In January of 1957 another large issue of bonds was sold at an effective interest rate of 4.56%, and, recently, in July of 1957, the effective interest rate of a large issue of bonds had risen to a trifle over 5%. I bring this out to show that since the cost of bond money has increased, in due time this will possibly have an upward effect on rates to all utilities.





## A. GAS

The Pacific Gas and Electric Company requested the State Public Utilities Commission to allow it to increase its interruptible rate schedules which serve large industrial customers. The large industrial customers with the help of counsel and many witnesses resisted this increase in their rates. Their position, although not openly advocated, was that the interruptible charges should not be increased but that the small householders' rates should be increased considerably. This office filed a brief in this proceeding in opposition to any increase in the householders' rates, which would become a reality in the near future if the request of the Pacific Gas and Electric Company to increase in an equitable manner the interruptible rates were disallowed. This proceeding has been taken under submission by the Commission but no decision to date has been rendered.

The Pacific Gas and Electric Company, from press releases, has indicated that it will build, if authorization is granted by the State Public Utilities Commission and the Federal Power Commission, a 1300-mile pipeline costing \$330,000,000, to bring natural gas from Calgary, Alberta, Canada, to the Bay area.

There is need for more gas in Northern California, since California, and especially Northern California, is still growing rapidly day by day, and natural gas is not only necessary for the potential new household customers but is also vitally necessary to meet the industrial expansion in the Bay area. I recommend that when this application to build the pipeline is filed with the State Public Utilities Commission, and also with the Federal Power Commission, that San Francisco be represented at all hearings to indicate to the commissions how vitally necessary San Francisco believes this gas to be for the Bay area. I would also recommend to you that the City of San Francisco intervene before both commissions and support the petition of the Pacific Gas and Electric Company.

## B. ELECTRIC

Hearings have been held on an application by the Pacific Gas and Electric Company to increase electric rates in the amount of 5.94%. If this increase is granted, the company will earn a rate of 5.75% on a net investment rate basis. This office filed a brief in this proceeding in which it took the position that instead of applying a 5.94% increase across the board, that the rates should increase uniformly by approximately 1 mill a kilowatt hour. If the rates are spread on the basis of 1 mill a kilowatt hour instead of on a percentage basis, it will mean that the householder customers of San Francisco will enjoy savings of \$330,000 annually. This case has been taken under submission by the State Public Utilities Commission.

## C. TELEPHONE

Hearings were held in the past fiscal year on an application by the Pacific Telephone and Telegraph Company to file rate tariffs for private mobile radio. Some of the parties to the proceedings, such as private suppliers of this type of equipment, objected strenuously to the Commission taking jurisdiction. The



position of the City and County of San Francisco was that the rates to be charged for this service should be at such a level that they would not cast a burden on the users of other telephone service. This case has been carried to the California Supreme Court.

A large amount of work has been done by this department on the application to the Board of Supervisors by the Pacific Telephone and Telegraph Company for a new telephone franchise.

#### D. TRANSPORTATION

The Yellow Cab Company, De Soto and other cab companies on May 29, 1957 applied for an increase in taxicab rates. Fundamentally the increase is that the rate instead of being a 30¢ a mile rate, if granted by the Board of Supervisors, will be a 40¢ a mile rate. In conjunction with the Controller's office, a study and report has been filed with the Board of Supervisors.

The Key System Transit Company in an application to the State Public Utilities Commission requested that it be allowed to substitute buses using the streets of San Francisco for loading and unloading passengers, and to abandon its rail service across the San Francisco-Oakland Bridge. The city was represented at these proceedings and presented three witnesses, argued the case orally, and was successful in preventing the Key System from using the streets of the City and County of San Francisco.

#### LEGAL OPINIONS RENDERED TO CITY DEPARTMENTS

The City Attorney, as legal adviser to all of the city officers, departments and agencies, has been required to render formal opinions to the said officers, departments and agencies on the legal questions arising in the administration of the affairs of the city. These formal opinions have required extensive legal research prior to the rendering of the formal opinion, and the opinions have been requested upon subjects quite new and different. During the fiscal year I was called upon to render 91 such formal opinions. During the period in which I have been in office prior to the present fiscal year I have been called upon to render approximately 1,100 such formal opinions. Because of the vast number of such opinions which have been rendered in prior years the departments, by reference to such opinions, have been able to dispose of many important matters confronting them without requesting additional opinions. The 91 opinions rendered by me during the past fiscal year have been rendered to the following departments:

Board of Supervisors .....	14
Recreation and Park Department .....	9
Department of Public Health .....	7
Controller .....	6
Fire Department .....	6
Health Service System .....	6
Public Utilities .....	6
City Planning Commission .....	4
Civil Service Commission .....	4
Department of Public Works .....	4





Police Commission .....	3
Retirement Board .....	3
County Clerk .....	2
Mayor .....	2
Public Administrator .....	2
Real Estate Department .....	2
Art Commission .....	1
Chief Administrative Officer .....	1
Chief Probation Officer .....	1
Coroner .....	1
Disaster Corps .....	1
Grand Jury .....	1
Merit Award Committee .....	1
Municipal Court Clerk .....	1
Parking Authority .....	1
Public Welfare Department .....	1
San Francisco Housing Authority ...	1

### CONTRACT PREPARATION AND APPROVAL

During the past fiscal year innumerable contracts were prepared by this office covering the activities of the city in both its proprietary and its governmental capacity. Some of these involved public works; others were for the engagement of experts; others were for the furnishing of supplies and equipment under competitive bid; and still others related to transactions between the City and County of San Francisco and the United States or the State of California. Every contract entered into by the city, as required by the Charter, was approved as to form by the City Attorney.

### LEGISLATIVE DEPARTMENT

The office of the City Attorney has been active in the legislative field, both before the Board of Supervisors of the City and County of San Francisco and before the State Legislature.

In connection with the Board of Supervisors, one of my deputies has been in attendance at every board meeting which has been held throughout the year and at every committee meeting. All the legislation enacted by the Board of Supervisors has been reviewed and legally approved.

In connection with the State Legislature, one of the attorneys from my staff was assigned as legal adviser to the State Legislative Representative of the city and county during the session of the State Legislature held during the last fiscal year. All of the bills which were introduced in the State Legislature were reviewed as to their possible effect upon the City and County of San Francisco. There were more than 5000 such bills reviewed. A digest of all proposed legislation affecting the city and county was prepared jointly by the Legislative Representative and this office, and action was taken on the recommendation of the State Legislation Committee or the Board of Supervisors in connection with all legislation which in any way affected the city and county. Numerous appearances were made before legislative committees to present the city's viewpoint on such proposed legislation.





## REDEVELOPMENT AGENCY

The legal problems of the Redevelopment Agency have increased during the past year. In addition to the time of one deputy assigned to the Agency, a considerable amount of my time has been devoted to the problems of the Agency, and on occasions it has been necessary to use other deputies in the office on Agency matters.

Land acquisition commenced in the Diamond Heights area and more than 60 per cent of the land has been purchased by negotiation with the property owners.

On April 10, 1957, a condemnation suit was filed against property owners in the area. This suit was one of the largest condemnation actions ever filed in the city. There were more than 300 parcels of land and approximately 500 defendants in the action. The complaint was more than 100 pages long and the summons almost as long. Approximately 100,000 sheets of paper were used. Since the filing of the suit many of the owners sued have sold their property to the Redevelopment Agency.

One of the property owners in the area (Fellom) filed a suit in the Superior Court to enjoin the Agency from instituting the eminent domain action in Diamond Heights on the ground that the Agency abused its discretion in not permitting him to participate in the redevelopment of his property in the area and on the ground that the California Redevelopment Law was unconstitutional. A demurrer to the complaint was sustained without leave to amend and the matter is now on appeal before the District Court of Appeal.

In addition to the above suit, Fellom, on behalf of himself and other property owners, filed another suit in the Supreme Court of the State of California seeking a writ of mandamus or prohibition to prohibit the Agency and the Superior Court from proceeding with the eminent domain suit. The Supreme Court referred the matter to the District Court of Appeal, which court denied the petition. A petition for hearing in the Supreme Court was filed by the plaintiffs and the Supreme Court denied the petition.

During the past year a loan and grant contract was executed between the Redevelopment Agency and the United States Government involving the Western Addition Project. This contract provides for a loan in the sum of \$16,691,025 and a capital grant in the sum of \$8,330,597.

Second appraisals of property in the Western Addition are now being completed and property acquisition will be commenced before the end of the year.

Recently the City Attorney filed on behalf of the Agency an application with the Corporations Commissioner of the State of California for a permit to sell the Agency's preliminary loan





notes in the Western Addition. The application was granted and the first issue of such notes will be sold at public auction within the next few months.

At the 1957 session of the Legislature many bills affecting redevelopment agencies were introduced. Several of the bills which were introduced, if passed, would have seriously impaired the activities of redevelopment agencies. It was necessary for the deputy assigned to the Redevelopment Agency to attend many of the committee hearings on the bills. We were successful in defeating the adverse legislation and having most of the favorable legislation passed.

In addition to the above projects, a preliminary plan has been prepared for the South of Market Project, and an application made to the Federal Government for planning funds to carry out this Project.

Considerable progress has been made on Redevelopment Area E (Produce Area Project). A group of public spirited citizens raised the sum of \$55,000 for the purpose of preparing a study of this area. The architectural firm of Skidmore, Owings & Merrill has prepared a proposed plan for this area with the funds donated.

The city has appropriated the sum of \$37,500 for the purpose of making appraisals in the area to determine whether this plan is economically feasible. In the meantime the Agency has made application to the Federal Government for planning funds for a portion of the area.

The legal work in connection with the above projects has been complicated and time consuming. It has been necessary to prepare and review many contracts, documents and other types of agreements.

#### PARKING AUTHORITY

The fiscal year 1956-1957 was a very busy and productive one in so far as the services of this office to the Parking Authority were concerned.

Complete legal documents relating to the construction and leasing of public off-street parking facilities were prepared for (1) Forest Hill Plaza, (2) Seventh and Harrison Park-Ride Plaza and (3) Sutter-Stockton.

The case of Larsen v. City and County of San Francisco, a taxpayer's suit to enjoin the city from proceeding further with the Fifth and Mission Project, was tried before Judge Molkenbuhr; after six days of trial, the court rendered its decision in favor of the city. An appeal was taken in which the District Court of Appeal reaffirmed the position of the city and sustained the decision of the Superior Court. Further litigation involving the Fifth and Mission Project was had in the condemnation proceedings



of City and County of San Francisco v. Abe Gelfand, resulting in a favorable decision for the city.

This office also participated in an appearance before the Commissioner of Internal Revenue in Washington, D. C., and was successful in obtaining a favorable ruling from the U. S. Treasury Department to the effect that the interest on the bonds issued by the San Francisco Downtown Parking Corporation in connection with the Fifth and Mission Project is exempt from federal income taxes.

One formal legal opinion relating to the use of bus zones by jitney buses was rendered at the request of the Authority.

All regular and special meetings of the Authority (31 in all) were attended by one of my deputies.

### FRANCHISE MATTERS

The city and county filed an action against American District Telegraph Company to recover \$23,117.80 plus undetermined sums for four additional years which are all in default by reason of the failure of the company to make payments under its franchise after it sold its lines in public streets to others and then leased the same lines back. The matter will be tried in the near future.

In connection with the expiration of the franchise of the Pacific Telephone and Telegraph Company, on October 3, 1956, this office has done extensive legal studies, prepared memoranda and advised and consulted with other city officials to the end that certain steps have been taken. An ordinance was prepared and passed continuing franchise obligations for a utility holding over after expiration of its franchise. In addition, a legislative program has been undertaken in connection with the League of California Cities to seek restoration or continuance of that fair compensation which the utility now refuses to pay for its use of city streets and public places. In addition, this office secured submission of the final payment from the telephone company under the expired franchise without the addition of certain conditions which the company had sought to attach to its final payment. Consultation is continuing in order to resolve the status of the telephone company and to maintain the principle that no occupation of city streets and public places without payment of fair compensation under a franchise shall take place by any company or person.

Continuing legal study has also been given to the status of the Southern Pacific Company, the operating franchise of which had previously expired. The completion of plans for the Southern Crossing approaches will enable a final determination to be made as to its status.

Preliminary study was being given at the end of the fiscal year to the granting of franchises for pay television in





San Francisco and steps were taken to determine the form of a franchise which, from its legal aspects, will be appropriate to protect city's interest in regard to the conduct of such a business and to the uses of public property connected with such activity.

#### ABATEMENT AND CONDEMNATION OF PUBLIC NUISANCES

The number of referrals from the Department of Public Works and the Department of Public Health, as well as other departments, for the abatement of public nuisances and for the condemnation of buildings which are in violation of city ordinances has been ever increasing. These departments have been carrying on a vigorous campaign to secure compliance with the municipal codes, and the hard core of the cases, where the owners have refused voluntarily, after hearing before either the Director of Public Works or the Director of Public Health, to either demolish the buildings or bring them in compliance with municipal codes, are referred to the City Attorney's office for legal action.

During the past year 87 such requests were referred from these departments to the City Attorney. During said period 54 actions were filed by the City Attorney against property owners in such matters. Also, during said period, 84 of said abatement matters were terminated successfully by my office. Of the said 84 matters terminated 55 involved the complete destruction of the buildings which could not be rehabilitated to be in compliance with the municipal codes and 29 involved a number of buildings rehabilitated to be brought in compliance with the municipal codes. Of the said 84 matters terminated 43 were terminated without the necessity of filing litigation, but through negotiation with the owner, and 41 were terminated only after the institution of legal action by the city against the owner.

A vigorous enforcement program is a primary necessity in these matters, both as a matter of public safety and health to the residents of the City and County of San Francisco generally and also in connection with the Urban Renewal Program of the United States.

Presently, five of the deputies on our staff are devoting a considerable portion of their time to such matters, and were I able to spare more deputies they too could be occupied in the enforcement program being conducted. It is anticipated that in the future an ever increasing number of such referrals will be made to the City Attorney for the institution of legal actions because of the accelerated program which is presently being carried on in the matter of Urban Renewal.

#### PUBLIC WELFARE DEPARTMENT

In the period beginning July 1, 1956 and ending June 30, 1957, a total of 93 cases were referred to the City Attorney's





office by the Public Welfare Department. Of these cases 84 have been successfully concluded. Action is being taken to conclude the remaining 9 cases. It should be noted that 31 cases were referred to the City Attorney's office after a finding of liability had been made by the Board of Supervisors. All 31 of these cases were successfully concluded.

Three Superior Court actions previously filed to enforce the liability of legally responsible adult children to contribute to the support of parents receiving Old Age Assistance were successfully concluded and dismissals were filed in these cases.

#### WORKMEN'S COMPENSATION LITIGATION

The Retirement System of the City and County of San Francisco, under Section 172 of the Charter, administers the benefit provisions of the Workmen's Compensation laws of the State of California. The City Attorney's office represents the city and the employees' retirement system in hearings on said workmen's compensation matters before the Industrial Accident Commission of the State of California. The hearings usually fall into two categories: (1) where the city denies liability for the alleged injury of the employee or (2) where the city contests the amount of disability alleged to have resulted from the injury. The hearings occur on an average of four times a month. All necessary legal papers and documents in connection with the hearings are prepared by the City Attorney's office.

The City Attorney also represents the retirement system in the matter of the subrogation of claims of the system against a third party who has caused injury to a city employee in the course and scope of his employment in an attempt to recover the amount the city has expended for the employee because of his injuries.



## CONCLUSION

In your request of August 22, 1957 for the annual report from the City Attorney, you listed six items on which you desired specific information. The following is my reply to the six matters referred to:

### 1. Comment on the Progress of Capital Programs

I believe this matter is inapplicable to our department, so no reply is made thereto.

### 2. Suggestions or Recommendations with Respect to the Activities of the City Attorney's Office or to City Affairs Generally

As to suggestions with respect to the office of the City Attorney, I feel it my duty to reiterate the two urgent requests that have been made annually in the annual reports for the years 1951-52 through 1955-56.

#### (a) Inadequacy of the Quarters in which the City Attorney's Office is Now Located

I am mindful that there will be submitted to the voters in November a bond issue for the construction of a new court house and for the renovation and rehabilitation of the City Hall and that should said bond issue be successful, the matter of adequate quarters for the City Attorney's office would eventually be solved. However, even if said bond issue should be successful it would be approximately four to five years before the new facilities would be constructed and ready for occupancy, so that I feel duty bound to again reiterate the need for the immediate increase of the space allocated to the City Attorney's office.

As I have pointed out to you in the past, the hallway of the City Hall proper has been blocked off on the entire south-east portion of the building to be used for office and library facilities. According to the original plan, a portion of this area was to be used as an entrance and waiting room and for the location of the law clerk and the operation of the telephone exchange. The remainder was to be used as a library. The original portion set aside as a library is now occupied by four stenographers with their stenographic equipment, with a corresponding decrease of space allocated for library use. Additionally, the remainder of the space not occupied by the stenographers, because of the large number of cases tried by the City Attorney's office and the number of prospective witnesses who must be kept available for such cases, is constantly occupied by persons waiting to testify for and on behalf of the city.





It is apparent from the above that to all intents and purposes the area originally set aside as a library has been rendered useless for such purpose because of the noise from the stenographers' typewriters and because of the constant parade of witnesses and other persons through the library area. I may also point out that the said library serves as a corridor to the office space occupied by 13 attorneys.

As to the rest of the facilities of the office, I have pointed out in the past the inadequate quarters of the main stenographic room which houses seven stenographers in a very small area.

As to the attorneys, I have pointed out in the past that many of the private offices of the attorneys have no windows and are unsuitable for the purpose for which they are used. At least nine attorneys have no private offices. The offices of half of the attorneys can be reached only by passing through the offices of other attorneys. This situation interferes greatly with the interviewing of witnesses, taking of depositions and the general work of the office. I, therefore, urgently request that consideration be given immediately to more adequate quarters for the performance of the work of the City Attorney.

#### (b) Necessity for Increase of Staff

My second urgent request concerns the necessity for an increase of both the professional and clerical staff because of the increase of work being done by this office.

Last year, because of the pendency of the telephone franchise matters referred to above, two attorneys were added to the staff. The Board of Supervisors, however, refused to include in the budget an additional position which you, as Mayor, had approved. You may recall that my original budget request was for two additional attorneys and that after I conferred with you on the matter it was agreed that only one would be approved by you. However, the Board, as I have indicated, refused even to create this one position.

I know that you, as Mayor, from the vantage point from which you view the affairs of the City and County of San Francisco, are cognizant of the great increase in the problems confronting the City and County of San Francisco and also of the growing complexity of the problems confronting our municipalities generally in their relations with the state and federal government, with private corporations and with the citizens at large. All of these matters eventually, in one way or another, find their way into the City Attorney's office in the form of legal matters which must be handled and processed.

In those portions of the report set forth above, I have attempted briefly to cover the myriad problems which confront the City and County of San Francisco, and an increase in all of the work done for the respective departments is anticipated for the



future. Because of this, I wish to point out that it is urgently necessary that there be an increase in the staff of the City Attorney to cope with these problems and so that they be handled efficiently and expeditiously for the benefit of the City and County of San Francisco.

3. Comparison of Expenditures for all Appropriations,  
Other Than Those for Personal Services, With  
Original Budget Appropriations for 1956-1957

In reply to your request for comparative figures between budget requests and annual expenditures for 1956-1957, please be advised that our budget requests have in all cases approximated the annual cost or expenditure.

4. Comparison of Revenues with Revenues  
Estimated in Budget of 1956-1957

As the revenues received by the City Attorney's office are very minor, I feel no comment is necessary.

5. Comments on the Two Previous Items

I feel no comment is necessary here.

6. Statistics on Work Accomplished

As to statistics on the work accomplished, these have been set forth in detail in other portions of the report relative to the particular work and particular division of this department.

Respectfully submitted,

DION R. HOLM  
City Attorney



DOCUMENTS DEPARTMENT

MAY 5 1965

SAN FRANCISCO PUBLIC LIBRARY

# **ANNUAL REPORT**

of the

# **CITY ATTORNEY**

**CITY AND COUNTY OF SAN FRANCISCO**

July 1, 1957 - June 30, 1958



Dion R. Holm  
City Attorney





**ANNUAL REPORT**  
of the  
**CITY ATTORNEY**

**CITY AND COUNTY OF SAN FRANCISCO**

July 1, 1957 - June 30, 1958



Dion R. Holm  
City Attorney



ENCE S. MANA  
HIEF DEPUTY CITY ATTORNEY

ND P. BERGEROT  
IEF TRIAL DEPUTY

Y CITY ATTORNEYS

ORMAN SANFORD WOLFF

WESLEY DAVIS

RL BENNEHOFF

RNARD J. WARD

ORGE E. BAGLIN

OMAS J. BLANCHARD

LLIAM F. BOURNE

ONALD J. KROPP

HN ELMER BARRICKLO

OMAS A. TOOMEY, JR.

ROME COHEN

NES O'BRIEN SMITH

ANK J. NEEDLES

ORGE P. AGNOST

ORLEY GOLDBERG

LLIAM E. MULLINS

OBERT M. DESKY

DION R. HOLM

CITY ATTORNEY

CITY HALL

SAN FRANCISCO 2, CALIFORNIA

HEMLOCK 1-1322

September 12, 1958

THOMAS M. O'CONNOR  
PUBLIC UTILITIES COUNSEL

DEPUTY CITY ATTORNEYS

SAMUEL E. YEE

RAYMOND J. REYNOLDS

PATRICK R. KELLY

EMMET B. KEEFFE

JOHN J. TAHENY, JR.

THEODORE J. LITTLE

MCMORRIS M. DOW

THEODORE F. BOFINGER

WILLIAM J. BRAUN

PAUL J. DI NOIA

ORVILLE I. WRIGHT

RICHARD J. CAREW

ROBERT A. KENEALEY

DONALD J. GARIBALDI

LAWRENCE E. O'LEARY

ADMINISTRATIVE ASSISTANT

ROBERT R. LAUGHEAD

CHIEF VALUATION AND  
RATE ENGINEER

The Honorable George Christopher  
Mayor of the City and County of San Francisco  
San Francisco, California

Dear Mayor Christopher:

I am forwarding to you my report describing the activities of the office of the City Attorney for the fiscal year commencing July 1, 1957 and ending June 30, 1958.

It has been my endeavor to give a complete picture of the varied activities carried on by my office, without going into undue detail.

I should like to point out particularly how the increase in the general activities of all departments in City government is reflected in the volume and complexity of the legal problems presented to the office of the City Attorney, resulting in a constant and continual increase in the work handled by this office.

Yours truly,



DION R. HOLM  
City Attorney





## TABLE OF CONTENTS

---

	Page
Litigation Department .....	1
A. Tort Litigation .....	1
1. Municipal Railway .....	2
2. Other Departments .....	3
(a) Public Works Department .....	4
(b) Governmental Departments other than Department of Public Works..	5
Recapitulation of Statistics on Tort Litigation ....	6
B. Other Litigation .....	6
C. Appellate Litigation .....	7
Public Utilities Department .....	8
A. Airport .....	8
B. Hetch Hetchy Water Supply, Power and Utilities Engineering Bureau .....	11
C. Bureau of Light, Heat and Power .....	11
D. Water Department .....	12
E. Municipal Railway .....	13
F. Public Utilities Commission .....	14
Rate Department .....	14
A. Electric .....	14
B. Gas .....	15
C. Telephone .....	16
D. Transportation .....	16
Legal Opinions Rendered to City Departments .....	17
Contract Preparation and Approval .....	18
Legislative Department .....	19
Redevelopment Agency .....	19
Parking Authority .....	21
Franchise Matters .....	22
Abatement and Condemnation of Public Nuisances .....	23
Public Welfare Department .....	26
Workmen's Compensation Litigation .....	26
Conclusion .....	28



ANNUAL REPORT  
OF  
CITY ATTORNEY  
DION R. HOLM

July 1, 1957 - June 30, 1958

The City Attorney is the chief legal officer of the City and County of San Francisco and pursuant to the provisions of Section 26 of the Charter must represent the City and County of San Francisco in all actions and proceedings in which it may be legally interested, or for or against the City and County or any officer of the City and County.

Additionally, the City Attorney must prepare and approve as to form all ordinances, bonds and contracts of the City and County of San Francisco.

The City and County of San Francisco is both a city and a county, and the City Attorney, therefore, performs the duties ordinarily performed by the County Counsel in all matters wherein the City and County is acting as a county.

Detailed herein is a statement of the activities of the City Attorney's office for the fiscal year July 1, 1957 to June 30, 1958.

LITIGATION DEPARTMENT

A substantial amount of the work of the City Attorney each year involves litigation in which the City is either a party defendant or a party plaintiff. Because of the varied activities of the City and County in the operation of the Municipal Railway and in all of its governmental activities, the City and County of San Francisco is involved in more litigated matters than any other individual or corporate body in San Francisco. The litigation in which the City and County of San Francisco is involved falls into several categories, as set forth below.

A. TORT LITIGATION

Of the litigated matters in which the City and County is a party, the greatest volume involve tort cases where the City and County is named as a defendant for personal injury or property damage alleged to have been received from the operation of the Municipal Railway or from governmental activities wherein governmental immunity has been waived under the Public Liability Act of 1923 or other statutes.





In the preparation of such matters for trial extensive work must be done by the members of the staff. This particularly involves a review of the investigation, arranging for medical reports to determine the extent of injury, and the taking of depositions of the parties to said actions.

During the fiscal year 1957-1958 the following number of depositions were taken:

Municipal Railway cases .....	641
Non-Railway cases .....	<u>207</u>
Total .....	848

#### 1. Municipal Railway

The Municipal Railway is accountable for the greatest volume of tort litigation handled by the City Attorney's office each year. The following table illustrates the work done for that department during the last fiscal year:

Actions filed .....	444
Actions tried, settled or dismissed .....	434
Actions pending at the end of the fiscal year .....	733
Prayers of actions pending at the end of the fiscal year ..	\$19,935,392
Claims filed against Municipal Railway .....	2865

In addition to the foregoing, 1,712 non-litigated claims were settled by the Claims Department of the Public Utilities Commission after rendition of services in regard thereto by this office. In respect to each of these claims, except those under \$100, a review was made by this office and a valuation made for the purpose of settlement. Written approval of each settlement was given to the Public Utilities Commission and the Controller. Releases and other closing papers were also approved in each instance.

Of the 434 litigated cases which were disposed of as referred to above, the total of the prayers in said cases was \$8,872,102, and the amount paid by the City in the disposition of said 434 cases was \$666,581. The total payments were 7.5% of the prayers. Following is a breakdown of the cases referred



to above:

	<u>Number</u>	<u>Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
<u>Judgments:</u>				
Paid	112	\$2,015,250	\$251,210	12.4
Won or dis- missed	<u>115</u>	<u>\$2,039,229</u>	<u>-</u>	-
	227	\$4,054,479	\$251,210	
<u>Litigated</u>				
<u>Settlements:</u>	<u>207</u>	<u>\$4,817,623</u>	<u>\$415,371</u>	8.6
Total Judgments and Litigated Settlements	<u>434</u>	<u>\$8,872,102</u>	<u>\$666,581</u>	7.5

Numerous street car, bus and trolley coach operators were represented at coroner's hearings and hearings in the Criminal Division of the Municipal Court where there was the probability of substantial damage claims being subsequently filed against the City and County.

Periodically during the fiscal year this office assisted at meetings of management, operations and personnel of the Municipal Railway and participated in their discussions and conferences which concerned matters of safety precautions, equipment, public relations and training of personnel.

## 2. Other Departments

Tort litigation involving departments other than Municipal Railway arises generally from statutes wherein governmental immunity has been waived in actions of a municipality in its governmental capacity under statutes such as the Public Liability Act of 1923 or provisions of the Motor Vehicle Code of the State of California. As I have indicated in the past, the trend generally in such actions has been for greater liberality in the interpretation of the statutes by the courts and also greater liberality in the actions of judges and juries in the award of damages. The inevitable consequence of such liberality has been to encourage a greater number of lawsuits to be filed against municipalities.

While such actions may involve practically all governmental departments of the City and County of San Francisco, the greater number arise from the operations of the Department of Public Works, which is charged with the responsibility of maintaining our streets and sidewalks, sewers and other such public works. A detailed statement is therefore set forth herein as to





the legal actions under the Public Liability Act of 1923 involving the Public Works Department.

During the said fiscal year there were 751 claims filed against all departments of the City and County of San Francisco exclusive of the Municipal Railway.

(a) Public Works Department

During the fiscal year 67 cases involving the Department of Public Works were disposed of by the City Attorney's office, either through settlement or court action. These cases involved actions arising from the condition of sidewalks, curbs or roadways, sewers or equipment of the Public Works Department. Following is a breakdown of the cases disposed of and the amounts paid:

<u>Number of Cases Disposed of</u>	<u>Total Prayers</u>	<u>Total Amount Paid</u>	<u>Percentage</u>
67	\$1,657,021	\$ 34,851	2.1

Sidewalk Cases

As I have also indicated in the past, more than 50 per cent of the cases in which the Department of Public Works is involved arise from actions wherein it is alleged that there is a dangerous and defective condition of the sidewalk, causing injury to a pedestrian.

It has been my practice in the past to report separately on the status of sidewalk cases against the City and County. I am again happy to report that my office has been most successful in the defense of such sidewalk cases brought against the City for damages as the result of an alleged dangerous and defective condition of its sidewalks under the Public Liability Act of 1923.

A review of last year's activities in regard to sidewalk cases indicates the amount paid out by the City and County of San Francisco has been held to a minimum. Following is a summary as to sidewalk cases tried for the year 1957-1958:

<u>Number of Cases</u>	<u>Amount of Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
49	\$1,090,521	\$ 30,711	2.8

In the past I have indicated the efforts of the office of the City Attorney in pioneering the movement to place the ultimate liability in this type of case upon the abutting property owner in the situation where the abutting property owner has made a special use of the sidewalk, such as for a sidewalk elevator, sewer vent, skylight, depressed driveway, or other such use apart from the normal and customary use of sidewalks, and as a result





of such special use a dangerous and defective condition of the sidewalk is created or maintained.

In the case of City and County of San Francisco v. Ho Sing, 151 A.C.A. 434, the District Court of Appeal of the State of California held that the City and County of San Francisco was entitled to be fully indemnified from the abutting property owner where the City was compelled to pay damages to a pedestrian who was injured as the result of a dangerous and defective condition arising from a special use of the sidewalk by the abutting property owner. The Supreme Court of the State of California has granted a hearing in this case so the matter is not as yet final.

(b) Governmental Departments Other Than Department of Public Works

While the tort litigation in which the Department of Public Works is involved represents the largest number of tort actions wherein the City is acting in its governmental capacity, a substantial number of cases arise from the operation of other departments.

The departments involved are generally Recreation and Park Department, Department of Public Health, Police Department, Parking Authority, Real Estate Department, Unified School District, and other such City departments.

A summary of the disposition of the cases of said departments follows:

<u>Department</u>	<u>Number of Cases Disposed of</u>	<u>Total Prayers</u>	<u>Total Amount Paid</u>	<u>Percentage</u>
Unified School District	17	\$ 397,246	\$15,300	3.9
Police Dept.	11	371,966	4,650	1.2
Recreation & Park	8	623,462	1,150	.2
Public Health	7	332,443	300	.1
Dept. of Electricity	6	213,614	2,200	1.0
Real Estate Dept.	3	307,500	-	-
Water Dept.	2	1,154	-	-
Parking Authority	<u>1</u>	<u>13,110</u>	<u>-</u>	<u>-</u>
Total	55	\$2,260,495	\$23,600	1.0





## Recapitulation of Statistics on Tort Litigation

<u>Department</u>	<u>Number of Cases</u>	<u>Amount of Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
Public Works	67	\$ 1,657,021	\$ 34,851	2.1
Other Govern- mental Departments	55	\$ 2,260,495	\$ 23,600	1.0
	122	\$ 3,917,516	\$ 58,451	1.5
Municipal Railway	<u>434</u>	\$ <u>8,872,102</u>	\$ <u>666,581</u>	7.5
Total of all Tort Litigation	<u>556</u>	\$ <u>12,789,618</u>	\$ <u>725,032</u>	5.7

### B. OTHER LITIGATION

Litigation other than the tort litigation reported on above in which the City and County of San Francisco was involved during the fiscal year 1957-1958 generally arose from the activities of the various departments, boards and commissions and officers of the City and County of San Francisco.

Reports as to some of these matters are included in other portions of this annual report under separate headings, such as the litigation in connection with the Redevelopment Agency, the Parking Authority, and the Public Utilities Commission.

Generally, the litigation arose from the following activities: Eminent Domain actions for the acquisition of private property for public projects such as schools, the development of McLaren Park, and the Market-Portola widening; mandate actions against the Civil Service Commission, the Police Department, the Fire Department, the Department of Public Health; declaratory relief actions against the San Francisco City and County Employees' Retirement System, the California Academy of Sciences, and the Police Department; actions for alleged breach of contract for construction of public works; actions for the refund of taxes illegally or erroneously collected; actions to sustain the validity of municipal ordinances and to restrain violations of such ordinances.



## C. APPELLATE LITIGATION

With the large volume of litigation carried on by the City Attorney's office it is inevitable that a substantial number of such matters involving the City and County of San Francisco would be decided by our appellate courts.

During the fiscal year there was one case decided by the Supreme Court of the State of California and eight cases decided by the District Court of Appeal of the State of California.

In last year's report you were advised that in the case of Prince v. City and County of San Francisco, 48 A.C. 472, the Supreme Court of the State of California upheld the loyalty oath as a prerequisite to granting a veteran's tax exemption. The taxpayer in said case petitioned for a writ of certiorari to the Supreme Court, which was granted, and this office filed briefs and conducted oral arguments before the United States Supreme Court in this matter. The United States Supreme Court reversed the ruling of the California Supreme Court and declared the Constitutional Amendment in question to be violative of the Federal Constitution.

The case of City and County of San Francisco v. Superior Court, 161 A.C.A. 704, involved an interpretation of the Discovery provisions of the Code of Civil Procedure enacted at the last regular session of the State Legislature, and the District Court of Appeal therein determined that the Municipal Railway would be obliged to furnish to the injured plaintiff the names and addresses of all witnesses secured by the operator at the time of the accident.

Also decided by the Appellate Court were the cases of Fellom v. Redevelopment Agency, 157 A.C.A. 275, upholding the constitutionality of community redevelopment law, which is reported in detail in the Redevelopment section, and the case of Larsen v. City and County of San Francisco, 152 A.C.A. 391, which arose out of the construction of the Fifth and Mission Garage by the Parking Authority, which is reported in greater detail in the Parking Authority section.

The eight cases decided by the District Court of Appeal involved the following departments:

Municipal Railway .....	4
Retirement Board .....	1
Department of Public Works ...	1
Redevelopment Agency .....	1
Parking Authority .....	1





## PUBLIC UTILITIES DEPARTMENT

The Public Utilities Division of the City Attorney's office is charged with the function of giving legal advice and handling litigation for the Public Utilities Commission of the City and County of San Francisco and the various departments through which it conducts municipal utility service.

While accident litigation arising from the operation of the Municipal Railway is handled by the litigation division of the office, there is other important litigation involving municipal utilities. Such other litigation concerns such matters as rates and charges at the Airport, eminent domain proceedings to acquire property needed by municipal utilities and the defense of damage claims caused by the operation of water and power facilities.

Also, in line with the growth in recent years of the use of administrative adjudication for the settlement of important legal questions, this office is participating in an ever greater degree in importance in administrative proceedings, such as those before the Civil Aeronautics Board, for the establishment of airline routes, and before the State Water Rights Board, for the protection of the City's important vested water rights.

In addition, an important segment of the work of the Public Utilities Division consists of advice to the Public Utilities Commission and continuing consultation with the Commission, with the Manager of Utilities and with the heads and operating personnel of the various utilities departments. This policy of close consultation on all levels succeeds in preventing law suits in the future and remedying many difficult problems without the expense and delay of litigation.

The various matters undertaken at the request of the utility departments are detailed under the title of the respective departments.

### A. AIRPORT

During the past year this office carried on important litigation in regard to rates and charges for common use facilities at the San Francisco International Airport. The case of City and County of San Francisco v. Western Airlines had been filed by the City and County in the San Francisco Superior Court to compel Western Airlines to pay current rates and charges for its use of the landing field. The sum in controversy is \$214,385.14, which the City seeks to recover from Western for its failure to pay such charges. The money has been paid under protest pursuant to stipulation. In the past year extended conferences in regard to this matter were held with the officers of the City and between counsel. Extensive factual research was undertaken, depositions





had, and an extensive program of legal research carried out. The matter was tried for six days before the San Francisco Superior Court, briefs were filed and oral argument conducted. The matter has not been decided. This case is also important since it concerns the power of the Public Utilities Commission to apply current schedules of rates and charges to all airlines which do not have pre-existing rate contracts embodied in leases. This litigation involved rates and charges from the period 1951 to 1957.

During the past year there was a proceeding filed in the United States District Court by Western Airlines against the City and County of San Francisco to compel City to accept payment of landing field charges according to 1942 rates rather than those established September 1, 1957. This litigation concerns the same controversy but involves a period subsequent to 1957.

In connection with the subject of rates and charges this office also participated in negotiations to secure uniformity of the landing fees for all scheduled airlines using the Airport and to extend the present type of agreement providing for payment of current fees to all airlines. These negotiations have been concluded by the execution of contracts by all but two airlines.

Negotiations of a complex nature involving many conferences, the drafting of leases and preparation of other legal documents were also carried on in regard to the leasing of Airport property. One of the most important of those consummated during the past year was the leasing of Airport property to Hilton Hotels Corporation for the construction of a \$2,500,000 three hundred room hotel at the Airport. Other important lease negotiations were conducted with United Air Lines and American Airlines for the leasing by them of additional Airport property for their operations. Other lease negotiations were carried on with other airlines, tenants and concessionaires of the Airport. Contracts were also prepared and were reviewed, such as the contract for the retention of an airport consulting firm. In addition, permits for the use of Airport property were drawn and reviewed and there was continuing review of all faithful performance bonds, insurance policies, and other documents furnished in connection with the use of Airport property.

During the course of the year this office also worked out new procedures for the handling of Airport claims, for arrests which may be made at the Airport, for procedures for the towing of illegally parked automobiles, for the posting of signs and the promulgation of regulations for the protection of City's rights in regard to the use of Airport roadways, and in regard to the allocation of fines collected at the Airport. Ground transportation arrangements were also reviewed.

An important facet of the work of the office was the participation in proceedings before the Civil Aeronautics Board and its examiners regarding airline routes affecting San Francisco





and the San Francisco International Airport. These proceedings are undertaken in the public interest to obtain adequate airline service for the citizens of San Francisco and the users of the Airport. For the past year the City received a decision in its favor in the Transpacific case, involving the Great Circle Route From San Francisco to the Orient. The President of the United States and the Civil Aeronautics Board reaffirmed an earlier decision which makes San Francisco the terminus for flights over the Great Circle Route, in accordance with the position which the City had taken in this proceeding.

During the past year, in the Great Lakes-St. Louis to the Southeast cases, the Civil Aeronautics Board, through a Press Release, announced that it was giving San Francisco single carrier service to Miami via St. Louis. San Francisco also intervened in the Pacific Northwest Local Service case and has received a favorable decision from the Civil Aeronautics Board Examiner whereby a new airline will be permitted to extend its routes from the Northwest to San Francisco. Also, the City participated in further phases of the Dallas to the West case and is seeking additional service to Southern California, as well as to the Southwest, in said proceeding. Likewise, this office filed for intervention in the Pacific Southwest Local Service case and is likewise seeking additional service to Southern California cities and Las Vegas, Nevada.

During the year the City sought and succeeded in obtaining an expedited hearing in order to obtain a third nonstop air carrier between San Francisco and New York.

An important proceeding in which San Francisco has intervened is the Southern Transcontinental Service case which involves the question of air service throughout the whole Southern tier of the United States. A pre-hearing conference was held in this proceeding. In addition, this office also filed intervention in proceedings involving additional service to Los Angeles and a new nonstop service to Spokane, Washington. Each of these proceedings involves preparation of briefs, exhibits, and the preparation and presentation of testimony before the Examiner and before the Civil Aeronautics Board.

In addition to the above, certain litigation was carried on for the Airport, including proceedings in eminent domain,

Review was also undertaken and conferences held with officials of the City regarding the revision of Section 93 of the Charter which concerns the leasing of Airport property. A proposed Charter amendment was prepared for the clarification of such procedures.

During the past year opinions were prepared for the Airport Department regarding obligations of a licensee which subsequently takes out a lease and in regard to the rights and





obligations of the City's ground transportation licensee under its agreement. The latter matter involved three separate opinions. Other opinions were also rendered to the Commission.

#### B. HETCH HETCHY WATER SUPPLY, POWER AND UTILITIES ENGINEERING BUREAU

Several types of litigation were handled during the past year for the Hetch Hetchy Division. Four cases involving alleged damages caused by the construction of one of the Hetch Hetchy tunnels were prepared for trial, with the accompanying conferences, inspections and research. Another type of case involved alleged damages to property in Tuolumne County during the 1955 floods; these cases were also prepared for trial. Three eminent domain cases were also handled during the year, involving the acquisition of property both by and from the City.

In addition to litigated matters this office also took part in many conferences, hearings and negotiations. Of major importance to the City are those which have been held on State water policy, including conferences of the League of California Cities, hearings of the Legislature, and others. This office has actively participated in regard to the legal aspects of State water policy and in regard to other studies, official and unofficial, conducted in regard to water rights, water quality and regional development.

Conferences were held which resulted in the settling of a controversy between San Francisco and San Bruno over the use of San Bruno streets for the hauling of fill to San Francisco International Airport. Also conferences have been held in regard to maintenance of roadways on the Hetch Hetchy project in Yosemite National Park. Conferences were held in regard to contracts prepared for the purchase of property for and construction of Cherry Canyon project.

A charter amendment was prepared at the request of the Hetch Hetchy Division which would allow the use of retired City employees as expert witnesses in court, before administrative bodies or at legislative hearings. This amendment was designed to allow securing needed testimony in water rights matters and was approved by the electorate. In addition, continuing services were performed for the Division in regard to the review of a solution of legal questions arising on contracts, and in regard to the review of pending legislation, particularly legislation in the water rights field.

#### C. BUREAU OF LIGHT, HEAT AND POWER

Numerous claims were reviewed involving the Bureau during





the past year. In addition to the reviewed contracts and other documents, an opinion was rendered in regard to the financing of street lighting construction. Conferences with respect to the contracts for the maintenance and repair of street lighting were held.

#### D. WATER DEPARTMENT

During the past year litigation concerning the Water Department largely involved two categories. First, there are ten actions pending against the City and County for alleged property damage caused as a result of the water main break at Seventh and Howard Streets on July 4, 1957. The claims filed against the City as a result of that break totaled \$525,443.64. Extensive preparation for the trial of these cases has already taken place, including conferences, investigations and various pre-trial proceedings. The Western Union Telegraph Company is a co-defendant with the City and County in said cases. Other cases are pending which involve alleged water main breaks at other locations; one of these cases was tried and won by this office during the past year.

The second large category of cases which this office handled during the past year were actions in eminent domain both by and against the City and County, pending in San Mateo, Santa Clara and Alameda counties. These cases involve extensive preparation consisting of inspection of title reports, pleading, and evaluating the opinions of appraisers, in addition to the trial of such matters. Involved in these actions were acquisition of City and County property by governmental bodies for highway purposes, fire control, school district purposes, and recreation sites, and other purposes. Actions have been brought by the City and County to acquire property for its use for aqueduct tunnels, watershed protection and for pipe lines.

Other litigation for the Water Department involved other damage and personal injury claims, collection of rentals and adjudication of interests in rights of way.

Other cases pending are ten lawsuits involving water rate contracts which had been entered into by the Spring Valley Water Company. Extensive preparation has taken place on these cases. This office also passes on all damage claims for and against the Water Department.

A substantial portion of the work undertaken for this department involves the preparation, review and approval of leases, contracts and other documents for the department. Leases processed by this office during the past year included agricultural leases and leases of surplus Water Department property for various commercial purposes. Permits for the use of Department property are reviewed by this office. This office also attended a number of conferences in connection with the proposed sale of the Silva





Tract in Millbrae and problems of zoning and land use in connection therewith.

Administrative proceedings in which the office participated were extensive hearings conducted by the State Water Rights Board to determine water rights in connection with the construction of the Arroyo Del Valle Reservoir. The main hearing lasted four days and involved extensive preparation of testimony and exhibits, besides many conferences. A protest was also filed regarding several attempted appropriations from Arroyo Mocho and Las Positas Creek, in Alameda County, which might have an effect on the water rights of the City and County.

Hearings and conferences were also attended, particularly those dealing with the formulation of the California Water Plan, in order to protect the service area and other rights of the City and County. This office also participated in the presentations by City to obtain the selection of a suitable freeway route which would protect the sources and purity of its water supply in San Mateo County. Joint meetings were also held with officials of other cities and governmental bodies and other interested persons on mutual problems of a legal aspect. In the field of taxation of Water Department properties further studies were conducted and several protests filed. This office also reviewed certain annexation proceedings and the effect which they would have on City and County property. This office also prepared a formal opinion for the department on the validity of combined billing to water customers, reviewed Water Department rules and procedures for the collection of delinquent water bills.

#### E. MUNICIPAL RAILWAY

In addition to the extensive personal injury litigation conducted by this office on behalf of the Municipal Railway, other litigation was also in progress during the past year. Extensive pre-trial proceedings were conducted in Blum v. City and County of San Francisco, which involves the validity of the substitution of bus for cable car service on Washington Street, and the consequent removal of the cable car tracks. During the year this case was prepared for trial. Other actions defended involved an alleged nuisance claimed to have been caused by a Municipal Railway bus stop and a quiet title action.

Work was done in regard to leases for the rental of certain railway equipment, in regard to the relocation of Railway facilities for other projects, in regard to the franchise rights of other carriers in San Francisco and in regard to the current agreements for the joint use of various generating facilities. Contracts and other documents were prepared in connection with these and other matters.





In regard to the questions of premium pay and sick leave pay under the charter amendment providing for a 40-hour week for platform employees, three formal opinions were rendered by this office.

#### F. PUBLIC UTILITIES COMMISSION

In addition to the work for specific departments, this office also regularly performs certain legal services for the Public Utilities Commission, the Manager of Utilities, and other Commission personnel. Among these are the giving of regular advice to and consultation with the Commission, and the giving of advice to the Manager of Utilities on the legal aspects of the conduct of employee disciplinary proceedings, in order to make sure that all procedural safeguards are observed and all proper legal steps taken.

#### RATE DEPARTMENT

This last fiscal year 1957-1958 was a year in which this office participated in three major rate cases before the California Public Utilities Commission affecting all of the rate payers in the City and County of San Francisco. In addition, reports to the Board of Supervisors on taxicab rates were prepared in conjunction with the Controller's office.

The principal hearings during the year before the State Commission were applications of the Pacific Telephone and Telegraph Company for increased telephone rates and of the Pacific Gas and Electric Company for increased electric and gas rates. These proceedings are summarized below.

#### A. ELECTRIC

On February 8, 1957, the Pacific Gas and Electric Company filed its application for increased electric rates in the amount of 5.94% with a rate of return of 5.75% on a net investment rate base. Eight days of public hearings were held in the latter part of May and July. The matter was submitted subject to briefs and written arguments on August 1st. This office filed a brief in this proceeding in which it took the position that instead of applying an increase across the board on a percentage basis, the rates should be spread uniformly by approximately one mill per kilowatt hour should the full amount requested by the company be authorized. By using a kilowatt hour basis the annual savings to the domestic customers of San Francisco would be approximately \$330,000.





In its Decision No. 55780 the Commission granted a rate of return of 5.75%, spreading the increase by applying 0.15 mills per kilowatt hour to represent increased production costs, the balance spread on a percentage basis. The savings to San Francisco customers by spreading some of the increase on a uniform kilowatt hour basis amounted to approximately \$51,000 as compared to a straight across the board increase as proposed by the company.

## B. GAS

The Pacific Gas and Electric Company filed on December 17, 1956, an application to remove the \$2 ceiling from the fuel escalator clauses in certain of its interruptable gas rate tariff schedules. The result of removing the ceiling would have increased PG&E revenues by \$15,000,000 with fuel oil at \$2.95 per barrel, or \$10,771,000 at \$2.60 per barrel. This cost would be borne by the interruptable customers. On September 20, 1957, the company filed Application No. 39421 for an increase of \$9,219,000 to cover the increased cost of out of state gas.

The Commission issued its interim Decision No. 55614 on September 24, 1957, granting an increase of \$5,670,000 to interruptable customers, stating in the interim order that a substantial increase in revenue is warranted; however, the interruptable customers should not bear all of the proposed increase and an amendment by the applicant would be in order.

The company then filed its first amendment to Application No. 38668 on October 16, 1957, requesting an increase in rates to offset the cost of out of state gas and cancelled Application No. 39421. The second amendment to Application No. 38668 was filed on November 13, 1957, requesting a general increase in all rate schedules amounting to \$18,800,000 in addition to the \$9,400,000 requested in the first amendment.

The State Public Utilities Commission, by Decision No. 55998 dated December 17, 1957, granted the PG&E a \$9,348,000 increase to offset El Paso Natural Gas Company's increased costs of gas to PG&E effective January 1, 1958. Hearings were then continued on the second supplemental application and 18 days of public hearings were held between January 2 and March 21, 1958. The Commission, on July 9, 1958, issued Decision No. 56967 authorizing \$9,500,000 of an original \$18,332,000 requested. This increase represented approximately 30% per month for the average residential consumer in San Francisco.

Plans for construction of a 36" pipe line from Canada to San Francisco, a distance of approximately 1300 miles, was announced by the PG&E in July, 1957. The first step necessary in securing government approvals was taken on October 22, 1957 by the company in its application to the Oil and Gas Conservation Board of Alberta. This matter is now pending before this





board for its consideration. When application is made before the California Public Utilities Commission and the Federal Power Commission, the City should take an active part in support of the PG&E. With the increasing population it is imperative that new sources of gas be made available to Northern California. The natural gas is not only necessary for the potential new household customer but is also vitally necessary to meet the industrial expansion in the Bay Area.

### C. TELEPHONE

The Pacific Telephone and Telegraph Company filed on August 7, 1957, an application to increase rates by \$28,500,000 and later amended to include an additional \$12,000,000 increase, making a total of \$40,500,000. After 32 days of hearings the matter was submitted and a decision was issued on May 6, 1958, granting a \$27,500,000 increase.

The City and County of San Francisco hired an expert who gave testimony on the rate of return considered reasonable to maintain financial integrity and attract new capital. The company had requested as a bare minimum a rate of return of 6.91%. The City's expert witness testified that a rate of return of 6% to 6.35% would be reasonable. The Commission in its decision adopted 6.75%. The City's own rate expert has for years advocated equal rates for message units in the Los Angeles and San Francisco extended areas. In its decision adjusting the mileage rates it also reduced the message unit charge from 4.4¢ to 4.25¢, making this amount uniform throughout the State.

### D. TRANSPORTATION

The Yellow Cab Company, De Soto, and other cab companies applied for increased taxicab and limousine fares during the fiscal year. The request originally turned down by the Board of Supervisors in the earlier part of the year was finally granted after a further study was made and a revised report prepared by the Controller's office. The increased rate authorized by the Board of Supervisors will produce a 40¢-a-mile rate in place of the present 30¢-a-mile rate.

The Key System Transit Lines requested permission of the California Public Utilities Commission to substitute bus service for rail service, with no increase in fares. This was granted by the Commission and train service ceased at 3 A.M. on April 20, 1958. An increase in fares for Key System's East Bay operations was requested to offset a wage increase granted in the last quarter of the fiscal year but no increase was requested of its transbay operations due to the short time bus service has been in operation and also due to the estimated decrease in over-all expenses of the bus operations as compared to the rail service, as was brought out in the application by Key System for abandonment of its rail service. This increase was granted to the East Bay operations by Decision No. 57829, dated September 2, 1958.





LEGAL OPINIONS RENDERED  
TO CITY DEPARTMENTS

The City Attorney, as legal adviser to all of the City officers, departments and agencies, has been required to render formal opinions to the said officers, departments and agencies on the legal questions arising in the administration of the affairs of the City.

These opinions represent a careful and extensive job of research into the law and factual background, and recite with authorities the reasoning leading to the conclusion as determined, and these opinions, when issued, become public records for the future guidance of City officials in the day to day operation of their particular departments.

Since my appointment as City Attorney on March 1, 1949, to the end of the fiscal year June 30, 1957, I have had occasion to render 1,191 legal opinions. During the last fiscal year I was called upon to render 99 such formal opinions. Because of the vast number of such opinions which have been rendered in prior years, the departments, by reference to such opinions, have been able to dispose of many important matters confronting them without the necessity of requesting additional opinions.

The 99 opinions rendered by me during the past fiscal year have been rendered to the following departments:

Board of Supervisors .....	25
Controller .....	9
Department of Public Works .....	8
Civil Service Commission .....	6
Health Service System .....	6
Fire Department .....	5
Police Department .....	5
Recreation and Park Department .....	5
Department of Public Health .....	4
Mayor .....	3
City Planning Commission .....	3
Public Utilities Commission .....	3
Equal Employment Opportunity Comm. ...	2
Redevelopment Agency .....	2
Agricultural Commissioner .....	1
Board of Education .....	1
Board of Permit Appeals .....	1
Chief Administrative Officer .....	1
Disaster Council and Corps .....	1
John F. Fixa, Postmaster .....	1
Public Defender .....	1
Public Library .....	1
Real Estate Department .....	1
Retirement Board .....	1
San Francisco Housing Authority .....	1
Sheriff .....	1
Treasurer .....	1





## CONTRACT PREPARATION AND APPROVAL

During the past fiscal year innumerable contracts were prepared by this office covering the activities of the City in both its proprietary and its governmental capacity. Some of these involved public works; others were for the engagement of experts; others were for the furnishing of supplies and equipment under competitive bid; and still others related to transactions between the City and County of San Francisco and the United States or the State of California. Every contract entered into by the City, as required by the Charter, was approved as to form by the City Attorney.

Particular attention should be called to the work in connection with the Bay View Park Stadium and Recreation Center.

When the Board of Supervisors passed its Resolution No. 18340 on September 30, 1957, declaring policy regarding approval of the terms and conditions for leasing of the proposed Bay View Park stadium for major league baseball, and in response thereto the New York Giants transferred its National League franchise to the City and County, there fell upon this office the complicated task of initiating the drawing of the legal documents and instituting all legal actions necessary to accomplish the acquisition of the lands required and the construction of the multi-purpose stadium and parking facility within the recreation center at Bay View Park.

This office, together with legal counsel for the San Francisco Stadium, Inc., a nonprofit corporation founded for the purpose of assisting the City in financing the construction of the Recreation Center, participated in the preparation of the lengthy and complex legal documents which consisted of (1) an Agreement; (2) a Ground lease, (3) a Stadium lease, and (4) a Park lease. Additionally, the trust indenture and other documents were reviewed, title to all the property examined, and other numerous miscellaneous legal matters connected with the project were completed.

Concurrently with the preparation of the aforesaid documents, this office prepared and filed two condemnation actions; one to acquire certain properties within the Recreation Center site and the other to acquire immediate possession for the access roads to be constructed to and from the Recreation Center.

It was also necessary that the City acquire title from the State of California to certain street areas and a railroad right of way within the project area. In this connection this office initiated the necessary action in the State Legislature authorizing the conveyance of said lands to the City and worked closely with the State Lands Commission to effectuate the actual delivery of the patent.





Procedurally, this office prepared two resolutions for the Recreation and Park Commission and two resolutions and an ordinance for the Board of Supervisors.

In addition, this office also rendered two legal opinions on matters relating to this project.

#### LEGISLATIVE DEPARTMENT

The office of the City Attorney has been active in the legislative field, both before the Board of Supervisors of the City and County of San Francisco and before the State Legislature.

In connection with the Board of Supervisors, one of my deputies has been in attendance at every board meeting which has been held throughout the year and at every committee meeting. All the legislation enacted by the Board of Supervisors has been reviewed and legally approved.

In connection with the State Legislature, one of the attorneys from my staff was assigned as legal adviser to the State Legislative Representative of the City and County during the Budget session of the Legislature and the two extra sessions of the Legislature held this year. All bills submitted were reviewed and the proposed legislation affecting the City and County was reported to the State Legislation Committee or the Board of Supervisors.

#### REDEVELOPMENT AGENCY

The legal problems of the Redevelopment Agency have increased to such an extent that at the suggestion of the Federal Government funds were appropriated and another attorney employed to handle the increased work load. In addition, it has been necessary to hire special counsel in the trial of condemnation actions involving property in the Diamond Heights Project. Every conceivable effort is being made to acquire all of the land in Diamond Heights in order that this project may reach the construction stage. Even with the additional legal help a considerable portion of my time has been devoted to the problems of the Agency.

During the past year, two of the condemnation actions have gone to trial. In one case, Redevelopment Agency v. Standard Building Company, the trial lasted 17 days with the jury bringing in a verdict in the sum of \$137,000. The land owners had placed a value of \$155,000 on the property. In the other case involving two parcels of property, each one square block owned by Fay Improvement Company and Rosenberg Brothers, the trial lasted 34 days. In this case the jury brought in a verdict of



...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...

...the ... of the ...  
...the ... of the ...

...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...

...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...

...the ... of the ...  
...the ... of the ...

...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...

...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...

\$25,000 for one piece of property and \$27,000 for the other. In the answer the property owners had set up a value of \$100,000 for each piece of property and at the time of trial their expert witnesses placed a value between \$55,000 and \$65,000 on each parcel. A good many of the cases pending for trial were settled before trial.

In the case of Fellom v. Redevelopment Agency, wherein a property owner in Diamond Heights had filed suit to enjoin the Agency from instituting eminent domain action in Diamond Heights on the grounds that the Agency had abused its discretion in not permitting him to participate in the redevelopment of his property in the area, the District Court of Appeal sustained the judgment of the Superior Court and ruled in favor of the Agency. The Supreme Court of the State of California denied a hearing in the matter and Mr. Fellom has now filed notice of appeal to the Supreme Court of the United States.

In the Western Addition Project, approximately five million dollars worth of property has been purchased by negotiation with the property owners. It has been necessary to file two small condemnation actions involving property in the Western Addition Project.

A joint working agreement between the City and the Redevelopment Agency has been prepared and submitted to both the Agency and the Board of Supervisors. Under the terms of this agreement the City will undertake the filing of a condemnation action to acquire properties on Geary Street necessary for the Geary Street widening. This is being done in order that immediate possession of the property may be taken for this purpose.

California has the most cumbersome redevelopment statute in the country. Attempts are being made through interested groups and the League of California Cities to prepare legislation which would simplify the California law. The deputy assigned to the Redevelopment Agency has been in attendance at these meetings.

Considerable progress has been made in Redevelopment Area E (Produce Area Project). Under contract with the Redevelopment Agency, the firm of Skidmore, Owings and Merrill has prepared a tentative plan for the project and a public hearing was held on September 3, 1958 on this tentative plan.

At the request of the Federal Government the South of Market Project has been tabled for the time being.

The legal work in connection with the above projects has been complicated and time consuming. In this connection it has been necessary to prepare and review contracts, agreements and documents of all types.





## PARKING AUTHORITY

The fiscal year 1957-1958 continued to be a very busy and productive year in so far as the services of this office to the Parking Authority were concerned.

Complete legal documents relating to the leasing of public off-street parking facilities were prepared for

- (1) Seventh and Harrison Parking Plaza,
- (2) Alameda-York Parking Plaza, and
- (3) Marshall Square Parking Plaza.

In the case of Larsen v. City and County of San Francisco, a taxpayer's suit to enjoin the City from proceeding further with the Fifth and Mission Project, the Supreme Court denied a hearing thereby sustaining the favorable decisions rendered by both the trial court and the District Court of Appeal.

In the case of San Diego Maryland Hotel Building Corporation v. City and County of San Francisco, et al., in which the unsuccessful bidder for the operation of the Fifth and Mission Parking Facility sought a writ of mandate to compel the award of the bid to it, this office prepared and successfully argued a demurrer to the original petition, prepared and filed an answer to the amended petition, and participated in the taking of two depositions. This case is still pending.

A condemnation suit was prepared and filed to obtain the real property needed for the Sutter Stockton Parking Facility (i.e., City and County of San Francisco v. Fong Wan, et al.).

This office also participated in two conferences at Sacramento in the offices of the State Director of Finance, relative to the leasing by the State of the lower level of the proposed Civic Center Parking Facility.

One formal written opinion was rendered relating to the payment by the City of the costs for relocating the curbs adjacent to the Fifth and Mission Parking Facility.

Twenty-three regular and special meetings of the Authority were attended by one of my deputies.

The legal work rendered to the Parking Authority has been quite varied and time consuming, in that it has been necessary to prepare, review and discuss many contracts, leases and other legal documents.





## FRANCHISE MATTERS

Pacific Telephone and Telegraph Company filed an action in declaratory relief against the City and County of San Francisco on January 10, 1958, in an attempt to secure a determination that the City and County did not have power to grant telephone franchises for use of streets and other public places. This action also sought to obtain a declaration that the granting of telephone franchises is no longer a municipal affair, but rather a matter of state-wide concern. The City and County answered this suit and asked the court for a determination that it did have power to grant such a franchise and that the matter was properly one of municipal concern. Extensive research and briefing, preliminary motions and depositions were undertaken in preparation for the trial of this action. Factual investigations were made and witnesses were interviewed to establish the extensive ownership in fee by the City and County of its streets and the extensive use made of City streets by the telephone company.

The trial of the action resulted in a decision by the Superior Court that the City and County of San Francisco does have power to grant a telephone franchise and has the right to control the use of its streets and other public places as a municipal affair.

This decision is of significance as a successful initiation of the efforts of the City and County of San Francisco to secure from the Pacific Telephone and Telegraph Company compensation for the use of streets and other public places, payment of which has been refused since the date of expiration of that company's franchise in 1956.

Also in connection with the controversy with Pacific Telephone and Telegraph Company, this office participated in conferences with other members of the League of California Cities in order to obtain concerted action to solve the problem of the expiration of telephone franchises and the resulting nonpayment of compensation for the exercise of privileges by such utilities.

In connection with pending litigation against American District Telegraph Company to recover sums due and owing by it on its franchise with the City and County, the City was successful in obtaining a court ruling denying the company's motion for summary judgment.

A new field for this office during the past year was the subject of franchises for closed circuit system television. By reason of the fact that Skiatron Television, Incorporated, and International Telemeter Corporation applied for franchises for the construction and operation of public closed circuit television systems in the City and County of San Francisco, this office undertook extensive research concerning the appropriate terms for such





a franchise and entered prolonged negotiations as to the appropriate legal provisions to be inserted in such franchises. Several different drafts and alternative versions were prepared and conferences were held with the officers and legal representatives of the applicants for the franchises, with City officials and with officers and members of the League of California Cities. An appearance was also made and testimony given before the Subcommittee on Corporation Laws of the Assembly Interim Committee on Public Utilities and Corporations, when that body conducted public hearings in San Francisco on the subject of pay television, concerning the importance of maintaining adequate local control over the granting of franchises and the regulation of closed circuit television. Hearings of the Finance Committee of the Board of Supervisors were attended and the Committee advised on this subject. While the applications for franchises were ultimately withdrawn, much useful research was done on this subject and many requests were received from throughout the nation for copies of the proposed franchises, which were among the first to be prepared in this field.

#### ABATEMENT AND CONDEMNATION OF PUBLIC NUISANCES

The number of referrals from the Department of Public Works and the Department of Public Health for the abatement of public nuisances and for the condemnation of buildings which are in violation of city ordinances has been ever increasing. These departments have been carrying on a vigorous campaign to secure compliance with the municipal codes. Many cases are disposed of by these departments without the necessity of referral to the office of the City Attorney. However, where after hearing before the administrative officer the owner refuses to comply with the order of the Director of Public Works or the Director of Public Health, these matters are referred to the City Attorney's office for necessary legal action. It should be pointed out that matters referred to the City Attorney's office are usually the hard core of cases where the owners refuse to comply with the building codes even after a hearing before the administrative agency.

It has been the policy of the City Attorney's office to contact the owners prior to the filing of legal action, and through negotiation this office has been able to achieve compliance with the orders of the Director of Public Works or the Director of Public Health in many cases. Where the owners refuse to comply voluntarily, legal actions are instituted and vigorously prosecuted to compel the owners to comply with the orders of the administrative agency and with the provisions of the municipal codes.

It should be pointed out that a vigorous enforcement program is a primary necessity in these matters, both as a matter of public safety and health to the residents of the City and County





of San Francisco generally and also in connection with the Urban Renewal Program of the United States.

Presently five of the deputies on our staff are devoting a considerable portion of their time to such matters, and were I able to spare more deputies they too could be occupied in the enforcement program being conducted.

Recently additional inspectors have been added to the various enforcement departments, and it is anticipated that in the future an ever increasing number of such referrals will be made to the City Attorney's office for the institution of legal actions because of the accelerated program presently being carried on in the matter of Urban Renewal.

The records set forth on the next page indicate the number of matters that were successfully terminated by the office of the City Attorney during the past fiscal year, whether such terminations were litigated or non-litigated, the method of compliance, such as demolition or rehabilitation, and the number of referrals from the various departments and the number of actions filed during the year.



# ABATEMENT MATTERS

JULY 1, 1957 - JUNE 30, 1958

Department	No. of Cases Terminated	Method of Compliance		Referrals during Fiscal Year		Actions Filed in Fiscal Year
		Litigated	Non-Litigated	Demolition	Rehabilitation	
Public Works	70	23	47	38	32	71
Public Health	<u>9</u>	<u>8</u>	<u>1</u>	<u>3</u>	<u>6</u>	<u>4</u>
Total	79	31	48	41	38	81
						16
						<u>4</u>
						20





## PUBLIC WELFARE DEPARTMENT

In the period beginning July 1, 1957, and ending June 30, 1958, a total of 154 cases were referred to the City Attorney's office by the Public Welfare Department. This total is up from 93 referrals in the previous twelve-month period and represents more than a fifty per cent increase in the number of cases referred to this office by the Public Welfare Department. Of these cases 109 have been successfully concluded. Action is being taken to conclude the remaining 45 cases. Thirty-seven cases were referred to the City Attorney's office after a finding of liability had been made by the Board of Supervisors. Twenty-nine of these cases have been successfully concluded and action is being taken to conclude the remaining 8 cases.

## WORKMEN'S COMPENSATION LITIGATION

The Retirement System of the City and County of San Francisco, under Section 172 of the Charter, administers the benefit provisions of the workmen's compensation laws of the State of California. The City Attorney's office represents the City and the San Francisco City and County Employees' Retirement System in hearings on said workmen's compensation matters before the Industrial Accident Commission of the State of California. The hearings usually fall into two categories:

1. Where the City denies liability for the alleged injury of the employee; or
2. Where the City contests the amount of disability alleged to have resulted from the injury.

The City Attorney has appeared at 63 hearings averaging 5.2 per month, in which testimony was taken or evidence presented in behalf of the City and the Retirement System. The hearings will vary in length from one-half to four hours, averaging generally about one and one-half hours.

Matters which have come to a decision before the Industrial Accident Commission are subject to appeals and petitions. The City Attorney's office has filed two appeals with the District Court of Appeal, and ten petitions for reconsideration, averaging one per month. All the necessary legal papers and documents in connection with the hearings, appeals, and petitions are prepared by the City Attorney's office.

The City Attorney also represents the Retirement System in the matter of the subrogation of claims of the system against a third party who has caused injury to a City employee in the course and scope of his employment in an attempt to recover the



amount the City has expended for the employee because of his injuries.

The City has the right to file a suit on its own behalf or in intervention when the employee has filed a suit in his own behalf. The City Attorney's office has in the last year filed 14 suits in intervention, averaging 1.15 suits per month. Seven of the 14 have been closed, 7 are still pending and an additional 6 matters are under consideration.

On several occasions a lien has been successfully used to recover moneys for and on behalf of the City.

The City Attorney's office has appeared, cumulatively, in Workmen's Compensation matters on 95 occasions, averaging 7.8 times per month, during the period July 1, 1957 to June 30, 1958.





## CONCLUSION

In your request for the annual report of the City Attorney, dated August 15, 1958, you listed six items on which you desired specific information. The following is my reply to the six matters referred to:

### 1. Comment on the Progress of Capital Programs

I believe this matter is inapplicable to my department so no reply is made thereto.

### 2. Suggestions or Recommendations With Respect to the Activities of the City Attorney's Office or to City Affairs Generally

As to suggestions with respect to the office of the City Attorney, I feel it my duty to again reiterate the two urgent requests that have been made annually in the annual reports for the years 1951-52 through 1956-57.

#### (a) Inadequacy of the Quarters in which the City Attorney's Office is Now Located

I am mindful that the City Hall, as presently constituted, is wholly inadequate for all of the departments of City government located therein and that there will be submitted to the voters in November a bond issue for the construction of a new Court House and for the renovation and rehabilitation of the City Hall. Should the said bond issue be successful, the matter of adequate quarters for the City Attorney's office will eventually be solved.

However, I must point out the urgency of providing adequate quarters for the City Attorney's staff, even should said bond issue be successful, because of the fact that it would be approximately four to five years before the new facilities would be constructed.

As I have pointed out to you in the past, the hallway of the City Hall proper has been blocked off on the entire south-east portion of the building to be used for office and library facilities. The original plan contemplated that a portion of this area was to be used as an entrance and waiting room and location for the law clerk and telephone exchange, with the remainder to be used as a library. The original portion set aside as a library is now occupied by a part of our stenographic force with stenographic equipment located therein, with the corresponding decrease of the space allocated for library use making its use as a library



practically valueless. The space not occupied by stenographers is continually occupied by prospective witnesses who are waiting to testify for and on behalf of the City.

From the above, it will be noted that the library has been rendered useless.

As to the remainder of the facilities, I have continually pointed out the inadequate quarters of the main stenographic room, which houses seven stenographers in a very small area.

As to the attorneys, I have pointed out in the past that many of the private offices of the attorneys have no windows and are unsuitable for the purpose for which they are used. At least eleven attorneys have no private offices. The offices of half of the attorneys can be reached only by passing through the offices of other attorneys. This situation interferes greatly with the interviewing of witnesses, taking of depositions and the general work of the office.

I therefore urgently request that consideration be given immediately to more adequate quarters for the performance of the work of the City Attorney.

#### (b) Necessity for Increase of Staff

My second urgent request concerns the necessity for an increase of the staff because of the increase of work being done by the office.

In my original budget request of last year I asked for the appointment of two additional attorneys. However, these were deleted by your office.

I can only here, again, reiterate the importance not only of these two positions but even more positions on my professional staff so that the legal matters referred to my office may be handled properly and with dispatch. The problems confronting our municipality in its relation with the state and federal government, with private corporations and with citizens at large are growing in complexity and volume, and all of these matters eventually, in one way or another, find their way into the office of the City Attorney in the form of legal matters which must be handled and processed.

In the report hereinabove set forth I have attempted briefly to cover the many and varied problems which confront the City and County of San Francisco and to indicate the increase in all of the work done for the respective departments which is anticipated in the future.





3. Comparison of Expenditures for All Appropriations, Other Than Those for Personal Services, with Original Budget Appropriations for 1957-1958

In reply to your request for comparative figures between budget requests and annual expenditures for 1957-1958, please be advised that our budget requests have in all cases approximated the annual cost or expenditure.

4. Comparison of Revenues with Revenues Estimated in Budget of 1957-1958

As the revenues received by the City Attorney's office are very minor, I feel no comment is necessary.

5. Comments on the Two Previous Items

I feel no comment is necessary here.

6. Statistics on Work Accomplished

As to statistics on the work accomplished, these have been set forth in detail in other portions of the report relative to the particular work and particular division of this department.

Respectfully submitted,

DION R. HOLM  
City Attorney

THE UNIVERSITY OF CHICAGO  
DIVISION OF THE PHYSICAL SCIENCES  
DEPARTMENT OF CHEMISTRY  
530 SOUTH EAST ASIAN AVENUE  
CHICAGO, ILLINOIS 60607

TO THE EDITOR OF THE JOURNAL OF THE AMERICAN CHEMICAL SOCIETY  
FROM THE DEPARTMENT OF CHEMISTRY, UNIVERSITY OF CHICAGO  
RE: [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

MAY 5 1965

SAN FRANCISCO PUBLIC LIBRARY

# **ANNUAL REPORT**

of the

# **CITY ATTORNEY**

**CITY AND COUNTY OF SAN FRANCISCO**

July 1, 1958 - June 30, 1959



Dion R. Holm  
City Attorney





# **ANNUAL REPORT**

of the

## **CITY ATTORNEY**

**CITY AND COUNTY OF SAN FRANCISCO**

July 1, 1958 - June 30, 1959



Dion R. Holm  
City Attorney



VRENCE S. MANA  
DEPUTY CITY ATTORNEY

MOND P. BERGEROT  
CHIEF TRIAL DEPUTY

DEPUTY CITY ATTORNEYS

NORMAN SANFORD WOLFF  
C. WESLEY DAVIS  
VIRL BENNEHOFF  
BERNARD J. WARD  
GEORGE E. BAGLIN  
THOMAS J. BLANCHARD  
WILLIAM F. BOURNE  
DONALD J. KROPP  
JOHN ELMER BARRICKLO  
THOMAS A. TOOMEY, JR.  
JEROME COHEN  
AGNES O'BRIEN SMITH  
FRANK J. NEEDLES  
GEORGE P. AGNOST  
MORLEY GOLDBERG  
WILLIAM E. MULLINS  
ROBERT M. DESKY

DION R. HOLM  
CITY ATTORNEY  
CITY HALL  
SAN FRANCISCO 2, CALIFORNIA  
HEMLOCK 1-1322

THOMAS M. O'CONNOR  
PUBLIC UTILITIES COUNSEL

DEPUTY CITY ATTORNEYS

SAMUEL E. YEE  
RAYMOND J. REYNOLDS  
PATRICK R. KELLY  
JOHN J. TAHENY, JR.  
THEODORE J. LITTLE  
MCMORRIS M. DOW  
THEODORE F. BOFINGER  
WILLIAM J. BRAUN  
PAUL J. DI NOIA  
ORVILLE I. WRIGHT  
ROBERT A. KENEALEY  
DONALD J. GARIBALDI  
MICHAEL B. FOLEY  
JAMES J. STARK  
ROLAND J. HENNING

PAUL B. HOLM  
ADMINISTRATIVE ASSISTANT

ROBERT R. LAUGHEAD  
CHIEF VALUATION AND  
RATE ENGINEER

September 11, 1959

The Honorable George Christopher  
Mayor of the City and County of San Francisco  
City Hall  
San Francisco, California

My dear Mayor Christopher:

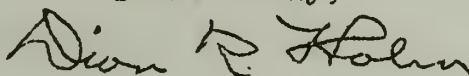
There is attached my report describing some of the activities of the City Attorney during the fiscal year July 1, 1958 to June 30, 1959.

Much detail has been avoided as it was my objective to condense the description of the work done in this office to a minimum. The office of the City Attorney is brought into many other fields than set out in the report, but to add to it would only increase its present undue length.

As I have reported in the past, the business increase of all other departments of city government is reflected in the activities of the City Attorney's office. Cases at issue and ready for trial numerically exceed any previous year and our disposal of cases is on the increase.

I emphasize again as I have been doing for so many years that we have an insufficient number of deputies and a wholly inadequate place in which to do our highly important work.

Yours truly,



DION R. HOLM  
City Attorney





# TABLE OF CONTENTS

	Page
Litigation Department .....	1
A. Tort Litigation .....	1
1. Municipal Railway .....	2
2. Other Departments .....	3
(a) Public Works Department .....	4
(b) Departments other than Department of Public Works ...	4
Recapitulation of Statistics on Tort Litigation	5
B. Other Litigation .....	5
C. Appellate Litigation .....	6
Public Utilities Department .....	7
A. Airport .....	8
B. Hetch Hetchy Water Supply, Power and Utilities Engineering Bureau .....	11
C. Bureau of Light, Heat and Power .....	12
D. Water Department .....	13
E. Municipal Railway .....	16
F. Public Utilities Commission .....	17
Rate Department .....	17
A. Electric .....	17
B. Gas .....	18
C. Steam .....	19
D. Telephone and Telegraph .....	19
E. Transportation .....	20
Legal Opinions Rendered to City Departments .....	21
Contract Preparation and Approval .....	22
Legislative Department .....	23
Redevelopment Agency .....	23
Parking Authority .....	25
Franchise Matters .....	27
Abatement and Condemnation of Public Nuisances .....	28
Public Welfare Department .....	31
Workmen's Compensation Litigation .....	31
Conclusion .....	33



ANNUAL REPORT  
OF  
CITY ATTORNEY DION R. HOLM

July 1, 1958 - June 30, 1959

The City Attorney is the chief legal officer of the City and County of San Francisco and his duties as prescribed by Section 26 of the Charter provide, among other things, that he must represent the City in all actions and proceedings in which it may be legally interested, or for or against the City and County, or any officer of the City and County; that he must give his advice and opinion in writing to officers, boards and commissions of the City and County; that he must prepare or approve as to form all ordinances, bonds and contracts of the City and County of San Francisco.

As the City and County of San Francisco is both a city and a county, the City Attorney performs the duties ordinarily performed by the County Counsel in all matters wherein the City and County of San Francisco is acting as a county.

There is detailed in this annual report of the City Attorney a statement of the activities of the office of the City Attorney for the fiscal year July 1, 1958 to June 30, 1959.

LITIGATION DEPARTMENT

The City and County carries on a multitude of activities of both a governmental and a proprietary nature, and in connection with the said activities much litigation arises in which the City is either a party defendant or a party plaintiff. A great proportion of the work handled by the office of the City Attorney involves representation of the City departments and officers in these matters which are the subject of litigation. The litigation in which the City and County is involved falls into several categories, as set forth below.

A. TORT LITIGATION

Tort litigation in which the City and County is named defendant for personal injury or property damage alleged to have been received constitutes the greatest volume of litigated matters handled by the office of the City Attorney. Such tort litigation arises generally from the operation of the Municipal Railway or from governmental activities performed by the City and County wherein





governmental immunity has been waived under the Public Liability Act of 1923, the Motor Vehicle Code, or other statutes.

The preparation of such matters for trial involves extensive work by the members of the staff, particularly since the new discovery procedures which have been instituted under State law and the commencement of the pre-trial procedure by the superior courts of the State of California.

The work of the office in the preparation of these cases involves a review of the investigation, arranging for medical reports to determine the extent of injury, the taking of depositions of the parties to such actions, the pre-trial hearing of the particular case and, finally, the disposition of the case by settlement or trial.

During the fiscal year 1958-1959 the following number of depositions were taken:

Municipal Railway cases . . . . .	662
Non-Railway cases . . . . .	<u>164</u>
Total . . . . .	826

#### 1. Municipal Railway

The Municipal Railway, the transit system operated by the City and County, accounts for the greatest volume of tort litigation handled by the City Attorney's office each year. Following is a table illustrating the work done for the Municipal Railway during the last fiscal year:

Actions filed . . . . .	451
Actions tried, settled, or dismissed . . . . .	435
Actions pending at end of fiscal year . . . . .	749
Prayers of actions pending at end of fiscal year . . . . .	\$20,119,140
Claims filed against Municipal Railway . . . . .	2,669

This office also rendered services to the Claims Department of the Municipal Railway. In respect to the settlement of claims, except those under \$500, a review is made by this office and a valuation for the purpose of settlement is made on each claim. Written approval of each settlement is given to the Public Utilities



Commission and the Controller. Releases and other closing papers are also approved in each instance. During the fiscal year, 1,597 such non-litigated claims were settled by the Claims Department after rendition of services in regard thereto by this office.

Of the 435 litigated cases which were disposed of as referred to above, the total of the prayers in said cases was \$10,043,917, and the amount paid by the City in the disposition of said 435 cases was \$1,015,428, which amount was 10.1% of the total prayers. Following is a breakdown of the cases referred to above:

	<u>Number</u>	<u>Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
<u>Judgments</u>				
Paid	85	\$ 1,181,271	\$ 290,705	24.6
Won or dismissed	<u>105</u>	<u>1,283,842</u>	<u>-</u>	-
Total Judgments	190	\$ 2,465,113	\$ 290,705	11.8
<u>Litigated settlements</u>	<u>245</u>	<u>\$ 7,578,804</u>	<u>\$ 724,723</u>	9.5
<u>Total Judgments and Litigated Settlements</u>	<u>435</u>	<u>\$10,043,917</u>	<u>\$1,015,428</u>	10.1

The City Attorney's office also appeared at coroner's hearings and hearings of the criminal division of the Municipal Court where there was the probability of substantial damage claims being subsequently filed against the City and County. Numerous street car, bus and trolley coach operators were represented at such hearings by this office. During the fiscal year this office assisted periodically at meetings of management, operations and personnel of the Municipal Railway, and participated in their discussions and conferences which concerned matters of safety precautions, equipment, public relations and training of personnel.

## 2. Other Departments

Tort litigation other than Municipal Railway, which has already been discussed, involving the City and County arises generally from statutes wherein governmental immunity from suit has been waived under the provisions of the Public Liability Act of 1923 or the Motor Vehicle Code of the State of California. The trend on the part of the courts has been toward a greater liberality in the interpretation of statutes, and there has also been greater liberality in the actions of judges and juries in the award of damages in





such cases. As a consequence, throughout the nation there has been a great increase in the amounts which have been paid by municipalities in such damage actions. This has also encouraged a greater number of lawsuits to be filed against all municipalities.

While such actions involve practically all governmental departments of the City and County, the greater number arise from the operations of the Department of Public Works, which is charged with the responsibility of maintaining our streets, sidewalks, sewers, and other public works.

During the fiscal year there were 692 claims filed against all departments of the City and County exclusive of the Municipal Railway.

(a) Public Works Department

During the fiscal year, 73 cases involving the Department of Public Works were disposed of by the City Attorney's office, either through settlement or court action. These cases involved actions arising from the condition of sidewalks, curbs or roadways, sewers or equipment of the Department of Public Works. Following is a breakdown of the cases disposed of and the amount paid:

<u>Number of Cases Disposed of</u>	<u>Total Prayers</u>	<u>Total Amount Paid</u>	<u>Percentage</u>
75	\$1,766,420	\$55,080	3.1

(b) Departments other than  
Department of Public Works

A substantial number of tort cases arise from the operation of other departments of the City and County, particularly the San Francisco Unified School District, the Recreation and Park Department, the Police Department, the Health Department, and other such City departments.

A summary of the disposition of the cases of said departments follows:



<u>Department</u>	<u>Number of Cases Disposed of</u>	<u>Total Prayers</u>	<u>Total Amount Paid</u>	<u>Percentage</u>
Unified School District	20	\$ 567,150	\$35,240	6.2
Recreation and Park	15	534,109	10,000	0.2
Police	12	259,892	38,966	14.9
Public Health	5	260,175	143	-
Real Estate	5	110,500	-	-
Water	5	39,890	3,836	9.6
Airport	2	35,000	1,000	2.9
Electricity	2	11,500	750	6.5
Fire	2	4,000	-	-
Public Welfare	1	300,000	-	-
Sheriff	1	113,235	-	-
War Memorial	1	20,000	-	-
Light, Heat & Power	1	10,000	250	2.5
Library	<u>1</u>	<u>5,200</u>	<u>300</u>	<u>5.8</u>
Total	73	\$2,270,651	\$90,485	3.9

Recapitulation of Statistics  
on Tort Litigation

<u>Department</u>	<u>Number of Cases</u>	<u>Amount of Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
Public Works	75	\$ 1,766,420	\$ 55,080	3.1
Other governmental departments	<u>73</u>	<u>2,270,651</u>	<u>90,485</u>	<u>3.9</u>
	148	4,037,071	145,565	3.6
Municipal Railway	<u>435</u>	<u>10,343,917</u>	<u>1,015,428</u>	<u>10.1</u>
Total of all tort litigation	<u>583</u>	<u>\$14,080,988</u>	<u>\$1,160,993</u>	<u>8.2</u>

B. OTHER LITIGATION

Other than the tort litigation reported above, the City and County was involved in substantial litigation during the fiscal year 1958-1959 arising generally from the activities of the various departments, boards and commissions and officers of the City and County. Detailed reports as to some of this litigation are set forth in this annual report under separate headings and departments,





such as the litigation in connection with the Public Utilities Commission, the Redevelopment Agency, the Parking Authority, the Public Welfare Department, and in connection with the abatement and condemnation of public nuisances and franchise matters.

Generally, the other litigation in which the City and County was involved, other than that reported under separate headings, infra, arose from the following activities: Eminent domain actions for the acquisition of private property for public purposes, such as the Market-Portola widening, the Geary Street widening, and McLaren Park, and the acquisition of sites for school projects; mandate and injunction actions against the Civil Service Commission, the Police Department, the Department of Public Health, the Fire Department, the City Planning Commission, and the Board of Permit Appeals; declaratory relief actions against the San Francisco City and County Employees' Retirement System and the Police Department; actions for alleged breach of contract for construction of public works and for the refund of taxes illegally or erroneously collected; and actions to sustain the validity of municipal ordinances and to restrain violations of such ordinances.

### C. APPELLATE LITIGATION

The City and County was also involved in substantial litigation in the appellate courts of the State. During the fiscal year there were four such cases decided by the Supreme Court and nine such cases decided by the District Court of Appeal of the State of California.

Among the noteworthy cases decided by the Supreme Court was the case of City and County of San Francisco v. Ho Sing, 51 Cal. 2d 127. In the Ho Sing case, the Supreme Court held that where a property owner, for his own exclusive use, places an artificial structure on the sidewalk which causes injury to a pedestrian and the City is compelled to pay damages to such injured pedestrian, the City has the right to be indemnified by the property owner.

As was stated in the Annual Report of 1956-1957, the City Attorney's office has been pioneering the movement to place the ultimate liability in this type of case upon the abutting property owner where such abutting property owner has made a special use of the sidewalk and as a result of such special use a dangerous and defective condition of the sidewalk was created or maintained. I am happy to report that because of the favorable result achieved in the Ho Sing case there will be substantial savings to the City in the years to come, as the abutting property owners will be compelled to bear the full loss where pedestrians are injured as a result of a dangerous and defective condition of the sidewalk where the abutting owner is making a special use of said sidewalk.

The case of Pacific Telephone and Telegraph Company v. City and County of San Francisco, 51 Cal. 2d 766, involving the telephone franchise, is reported on in this report at page 27.



In the case of In re Peterson, 51 Cal. 2d 177, the Supreme Court sustained the constitutionality of Sections 1115 to 1160 of the Police Code which authorized the chief of police to designate stands on public streets to be used by taxicabs with the consent of the person who occupied the ground floor of the building fronting the proposed stand, and which made it unlawful for the owner or operator of any public passenger vehicle for hire other than the permittee to occupy the stand.

In the case of Carr v. City and County of San Francisco, 170 A.C.A. 54, the District Court of Appeal held that the operation of a merry-go-round in Golden Gate Park was a governmental activity of the City and County of San Francisco and not proprietary, and sustained the action of the trial court in the granting of a nonsuit in favor of the City and County of San Francisco.

Following is a summary of the cases decided by the Supreme Court and the District Court of appeal by departments:

Supreme Court

Department of Public Works	1
Board of Supervisors	1
Registrar of Voters	1
Police Department	<u>1</u>
Total	4

District Court of Appeal

Department of Public Works	3
San Francisco Unified School District	2
Municipal Railway	2
Civil Service Commission	1
Recreation and Park Department	<u>1</u>
Total	9

PUBLIC UTILITIES DEPARTMENT

The Public Utilities Division of the City Attorney's office operates under the supervision of the City Attorney and of the Public Utilities Counsel and consists of the Public Utilities Counsel and those deputy city attorneys who are assigned to the work of the Public Utilities Commission pursuant to the provisions of Section 126 of the Charter. The basic function of the Public Utilities Division is advising and handling legal problems for the Public Utilities Commission and the several departments under the Commission, including the San Francisco International Airport,





Hetch Hetchy Water Supply, Power and Utilities Engineering Bureau, the Water Department, the Municipal Railway, and the Bureau of Light, Heat and Power.

The handling of litigation constitutes one of the major tasks in the public utilities field. Such litigation includes both matters in the State and Federal courts and, in addition, matters before such administrative agencies as the Civil Aeronautics Board, the State Water Rights Board, the State Board of Equalization, the Secretary of the Interior, and numerous other Federal and State agencies.

As important as the handling of litigation, however, is the constant advice rendered to the Public Utilities Commission, the departments thereunder and their officers and employees on matters which continually arise in the current administration of the utilities concerned. This policy of close consultation often succeeds in preventing legal controversies from arising and aids in preventing the far more time-consuming and costly process of litigation.

The various matters undertaken at the request of the Public Utilities Commission and the Utility Departments are detailed under the titles of the respective departments.

#### A. AIRPORT

Important steps were taken in the litigation between the City and County of San Francisco and Western Air Lines, Inc. regarding the rates charged Western for its use of common use facilities, principally the landing field, between 1951 and 1957. The City and County had previously filed an action against Western Air Lines designated "City and County of San Francisco v. Western Air Lines" in the San Francisco Superior Court, to compel Western Air Lines to pay current rates and charges. The trial of this matter was held in the prior fiscal year and involved the sum of \$214,385 which has been paid to the City under protest pursuant to stipulation for the period from January 1, 1951, through August 31, 1957. During the current fiscal year oral argument was conducted in this matter and on December 6, 1958 the Honorable John B. Molinari decided the cause in favor of the City and County and after preparation of findings, awarded judgment for said sum to the City and County of San Francisco. Western Air Lines has filed a notice of appeal from this judgment. The successful conclusion of this case in the trial court is most important since it rebuts any claim that the City and County discriminated against any airline during the period in question.

During the current period, there also has been pending a court action brought by Western Air Lines against the City and County of San Francisco, in the United States District Court for the Northern District of California, seeking to compel the City and



County to allow it use of landing field facilities at 1942 rates which had been applicable under a lease of the City and County with Trans World Airlines, Inc. This litigation would seek to prevent application to Western Air Lines of that schedule of rates and charges which became effective September 1, 1957. During the current fiscal year, however, Trans World Airlines has entered into an agreement with the City and County of San Francisco whereby it will pay current rates and charges effective as of July 1, 1957, and make payments to the City and County on a retroactive basis to cover said prior period. Extended negotiations, legal conferences, correspondence and preparation attended the processing of the above matters.

Additional litigation involving the San Francisco International Airport consisted of two suits in eminent domain, one brought by the City of Millbrae to acquire property for sewage facilities, and the other brought by the City and County of San Francisco to acquire certain additional airport land. Negotiations have been conducted in both cases. Also, certain personal injury matters involving claims against the City for alleged personal injury at the Airport were settled or dismissed during the past year.

An extremely important facet of the work of the office in airport matters was its participation on behalf of the City and County in proceedings before the Civil Aeronautics Board and its Examiners regarding airline routes affecting San Francisco and the San Francisco International Airport. This participation is undertaken in the public interest in order to obtain more adequate airline service for the citizens of San Francisco and the users of the airport. In representing the City and County in these proceedings, this office files pleadings, prepares and submits exhibits, participates in the hearings, and presents testimony, oral arguments and briefs.

The Pacific Northwest Local Service case was litigated for approximately two years. Decision was rendered by the Civil Aeronautics Board on May 28, 1959, and has now become final. San Francisco through the decision gained a new air carrier, West Coast Airlines, serving additional segments of the Pacific Northwest, and also gained an added air service to Portland by Pacific Airlines.

The Dallas to the West case started in January, 1956. After complete exhibits, briefs to the Examiner, Initial Decision by the Examiner, briefs to Board and oral argument, the Board deferred final decision and incorporated the whole record into the Southern Transcontinental case.

San Francisco has also been an active participant in the Pacific Southwest Local Service case, which envisions additional air service to practically all major communities in California south of San Francisco and to Las Vegas, Nevada. During





the fiscal year, this office participated in hearings in Long Beach, California, and Washington, D. C. Briefs to the Examiner have been filed.

Proceedings in the San Francisco-New York Nonstop case started May 3, 1957. The City Attorney and staff participated in hearings which were held in San Francisco and in Washington, D. C. Briefs were subsequently submitted to the Examiner, who rendered his decision granting American Airlines nonstop authority and San Francisco a third carrier service to New York. Briefs were filed with the Civil Aeronautics Board and the final oral argument was made in Washington in May. On May 15, 1959, the Board, by a notice of intended decision, voted 3 to 2 to sustain the Examiner's decision. As of the close of the fiscal year the Board had not rendered its final decision.

The Southern Transcontinental case is presently being heard; this office is participating on behalf of the City and County. For over ten years cities and air carriers have attempted to obtain an air route pattern extending from San Francisco along the southern tier of states to Miami, Florida. This case is presently being processed. Hearings covering presentations by civic groups have been held in Houston, Miami, and Los Angeles. San Francisco presented its case in the latter city. Hearings on the carriers' applications have been held in Washington, D. C.

The Trans Pacific Route case is of vital importance to San Francisco. On February 18, 1959, the President asked the Board to initiate a proceeding consolidating all Pacific air route matters into a single record. This matter encompasses the whole Pacific complex, with the exception of service to Alaska. The regions involved are the Polar, Central Pacific and South Pacific areas. San Francisco has intervened and participated in the pre-hearing conference at Washington in April. Exhibits were filed on August 31, 1959. Hearings will be scheduled for the next fiscal year.

This office also continued to participate in pending proceedings to obtain nonstop service between San Francisco and Spokane, Washington.

In addition, other matters not involving litigation were conducted by the office for the Airport during the past year. These matters included determinations regarding the validity of bids on airport contracts, review of rights and obligations under the Ground Transportation Agreement, a review of any possible liabilities arising from operation of jet aircraft at the Airport, determination of the powers of Airport employees to perform arrests for misdemeanors and breaches of the peace at the Airport, and investigation of legal problems in connection with activities and liabilities of Airport tenants and concessionaires.



A task of major importance is the preparation of leases, concession agreements and contracts regarding the multiple and ever-expanding uses of airport property in connection with growth of that facility concomitantly with the onset of the Jet Age. The following leases or agreements were prepared: a parking lease, two major pier leases with airlines, a hangar lease, revision of a prior base lease, two amortization agreements with airlines for the construction of facilities, an oil company lease, an additional plot lease for an airline, a lease with an airline for property for baggage handling purposes, numerous leases and space permits for space within airport buildings, a lease for new air cargo building, and a master contract with an architectural firm for formulation of an airport master plan including rendition of architectural services for superintendence of construction at the Airport over a three-year period.

In addition, assignments, subleases, insurance policies and bonds required under various leases, agreements, space use permits and other legal documents were prepared or reviewed.

The office participated in numerous conferences resulting in the preparation, submission to the voters and adoption of an amendment to Section 93 of the Charter of the City and County of San Francisco which expressly provides for the exclusive jurisdiction of the Public Utilities Commission in regard to the lease of Airport lands and Water Department lands.

A written opinion was also rendered in regard to this subject matter.

It should be noted that the above matters were resolved with the aid of continuous consultation with the Public Utilities Commission staff and the Airport Department, as well as by constant conferences and negotiations with the numerous tenants, concessionaires and contractors with whom the City and County has maintained relationships at the San Francisco International Airport.

#### B. HETCH HETCHY WATER SUPPLY, POWER AND UTILITIES ENGINEERING BUREAU

In the course of the last year three flood damage matters were tried involving damages alleged to have been caused by construction by the City and County of San Francisco of a roadway over the middle fork of the Tuolumne River and the alleged consequent obstruction of flood waters on said river during the 1955 floods. These three matters were tried in the Mariposa County Superior Court and although prayers for property damage totaled \$27,384 judgments were rendered for the three plaintiffs involved in the sum of \$9,389.





In addition, this office defended an action in eminent domain brought by the Alameda County Flood Control and Water Conservation District in the Alameda County Superior Court and received damages thereon on acquisition of certain Hetch Hetchy property, and itself brought an action in eminent domain in Tuolumne County Superior Court to secure a right of way easement for construction of an electric line for the Canyon-Cherry Project. In this action an order for immediate possession was secured and title to several needed parcels acquired. In another action brought by the State of California in the Stanislaus County Superior Court, the City and County agreed with the State on a final order of compensation with conditions under which the City was awarded \$7,400 as compensation for a highway crossing of the Hetch Hetchy pipeline.

A major matter initiated last year concerned greatly increased assessments levied on water rights and other properties of the Hetch Hetchy Project by the Assessor of Tuolumne County. Extensive conferences and negotiations followed, resulting at the end of the year in the preparation of a presentation scheduled for the following fiscal year before the State Board of Equalization for the review of said assessments. In this connection, extensive further review was made concerning source and title of water rights of the City and County in the area in question and of the history and applicability of tax laws, particularly the tax exemption provisions afforded municipal corporations under the provisions of the State Constitution.

In connection with the amended application to the United States Department of the Interior for Canyon Project, the Forest Service and the National Park Service requested certain stipulations, among which were certain requirements for flows from O'Shaughnessy Dam for fish releases. Conferences were held and preparations undertaken in attempts to arrive at a satisfactory disposition of this matter.

Contractual matters were also handled for the Hetch Hetchy Division, including several occasions on which opinions were given as to the validity of bids on contracts and other interpretations of various contract provisions were rendered. Contracts and other legal instruments were reviewed and approved.

Extensive review was also undertaken of certain proposed legislation, particularly tax measures which would have affected the immunity from taxation which the City and County enjoys under the State Constitution as a municipal corporation. Analyses were prepared of such legislation, and close scrutiny given to the legislative progress of each such measure.

#### C. BUREAU OF LIGHT, HEAT AND POWER

Numerous claims were passed upon by this office involving the said Bureau, contracts were reviewed and advice was given in



connection with maintenance and repair of street lighting and other problems. This office participated in the preparation of, and reviewed, the contract for service and repair of the San Francisco street lighting system.

#### D. WATER DEPARTMENT

During the past year important litigation was decided in favor of the City and County of San Francisco. Western Crown Cork and Seal Corporation had previously sued the City and County in San Francisco Superior Court in order to enforce a certain contract assigned to it under which the Spring Valley Water Company had covenanted to deliver water at a fixed rate in return for the grant of a pipeline easement. While Western Crown Cork and Seal sought to enforce this rate contract, the City and County asserted that the rate-making power of the San Francisco Public Utilities Commission as a rate-making body superseded the prior contract. The matter had been previously tried. It was held that the position of the City and County of San Francisco was correct, that it was not bound by the Spring Valley Water Company contract and that current rates were properly applicable. This action is important since several other actions are pending, two of which have been brought by the City and County in declaratory relief and which were recently consolidated for trial, testing the validity of rate provisions of prior Spring Valley Water contracts.

Another important category of cases in which the City and County of San Francisco is involved are those matters involving damages asserted to have occurred from water main breaks in facilities operated by the department. The most important of these is the group of eleven actions pending as a result of a water main break at the intersection of Seventh and Howard Streets on July 4, 1957. Thirty-three claims were filed against the City and County as a result of the break, in a total amount of \$525,444. Western Union Telegraph Company is a co-defendant with the City and County of San Francisco. The City and County has filed a cross-complaint against Western Union in the sum of \$14,377. During the course of the past year, accounting and engineering firms were hired, respectively, to assess the damage and to make determinations regarding causation thereof. Numerous conferences took place with representatives of said firms and with departmental representatives, numerous depositions were taken, interrogatories and requests for admission prepared and answered, and the cases were consolidated for trial. In addition, an action arising out of a water main break at Clay near Market Street was settled, and another such action involving Marin Street and Evans Avenue was settled by having a co-defendant pay both the plaintiff and the City and County for all damages caused. Another action arising out of a water main break at Harrison Street was also settled. Three other cases involving water main breaks were also prepared during the year.





Other litigation involving the department which has been processed during the past year involves actions for rental due on agricultural land, on which collections were made or are now being effected. This office also supervised the defense of seven actions involving alleged blasting damage to homes and personal injuries in connection with the construction of Sunset Reservoir. Several of such matters have been settled. Other actions defended concerned alleged torts involving Water Department property. Five actions were filed against one contractor by reason of his breaking Water Department mains in the course of various construction jobs.

Another important type of litigation handled by this office during the past year is represented by those eminent domain cases involving the San Francisco Water Department. Nineteen such actions were handled by this office during the past year. Eminent domain actions which have been brought by the City and County included actions to acquire property for pipeline purposes and to acquire additional watershed land for San Andreas Reservoir. Subsequent to the filing of this latter action, conferences and negotiations have taken place with the defendant in order to arrive at mutually satisfactory agreements for future protection of the reservoir from any contamination or pollution which might be caused by future construction.

There are also numerous eminent domain actions brought against the City and County by various local entities to acquire property rights held by it, for purposes such as highways, fire control, schools, recreation facilities and sewers. Several of these matters were settled in the course of the year; others were tried and rights of the City and County of San Francisco acquired on payment of proper compensation to it.

In one action brought by the State in the Alameda County Superior Court, there was intervention on the basis of certain alleged heirs of Mark Hopkins who claimed by an alleged chain of title to be owners of the property. The City and County of San Francisco contested said alleged ownership and after a trial of eight days received a judgment in its favor determining that said persons were not the heirs of Mark Hopkins and had no legal claim to the property in question. An appeal by the intervening claimants was dismissed and the City and County received the compensation paid by the State on acquisition by the State of the property in question. In connection with all of the above matters, extensive negotiations were had in order to arrive at fair compensation for those parcels of City and County property acquired by other entities as well as the payment of fair compensation on acquisitions by the City and County and proper conditions for the protection of its remaining property.

An action was filed by the City and County during the past year to collect damages from a land developer in San Mateo County for damages to an aqueduct caused by silt deposited over



same resulting from grading and excavation work of the developer.

An important class of litigation is that of administrative proceedings conducted on behalf of the City and County before the State Water Rights Board in order to protect the vested water rights of the City and County. In this connection, protests were filed before the Board in connection with the proposed appropriations of water by certain entities in Alameda County. This office also prepared an application to appropriate water from San Andreas Creek in connection with the proposed San Antonio Dam of the San Francisco Water Department. This office also conducts at all times a diligent review of the City's water rights in these and other connections.

Major study and preparation were given last year to the problem of greatly increased assessments levied on water rights and other properties of the Water Department located in Alameda County. Preparation was made for a proceeding to be conducted in the succeeding fiscal year before the State Board of Equalization to review such assessments. In this matter negotiations were conducted with the county officials concerned, and many consultations took place between this office and Water Department personnel.

This office also handled many other legal matters of importance for the Water Department over the past year. Of great importance was the preparation of certain proposed standard forms of Water Department contracts, including those designed for the purpose of delivery of water for resale to municipalities and other entities and for the installation of facilities to be conveyed to the Water Department in return for rendition of water service by it to certain newly constructed subdivisions. In the former connection, numerous conferences were held and meetings of the Bay Area Water Users Association were attended, in order that a complete study might be made of the conditions for long-term contracts which are under contemplation.

This office performed legal services in regard to leasing of Water Department property, including preparation of proposed lease of a large tract situated near Pleasanton for an industrial park. This projected lease thus far has required many conferences with interested parties and with municipal officials of Pleasanton.

Other leases prepared or reviewed included a walnut orchard lease of Water Department orchards at Sunol, a gravel quarry lease, a form of grazing lease, and leases of surplus lands for various commercial purposes in San Mateo, Santa Clara and Alameda Counties.

Other matters included review and approval of numerous Water Department contracts and permits, and review of other proceedings, including the study and preparation of numerous protests of taxes and special assessments levied on Water Department property.





This office systematically reviews all claims against the San Francisco Water Department and recommends which ones can be paid or otherwise settled and which should be denied.

Another important function during the past year was close scrutiny over legal provisions of proposed water legislation, including those measures which have been adopted as the California Water Plan, and all measures affecting water rights or operations of water utilities. Recommendations were made on many such measures, and legislative hearings were attended when necessary to protect the interests of the City and County. Similar services have also been performed with regard to measures affecting water rights which are pending before this session of Congress.

#### E. MUNICIPAL RAILWAY

A major item of litigation, in addition to the defense of personal injury cases which is covered elsewhere in this report, was the defense by this office of litigation undertaken by taxpayers under the caption of "Blum v. City and County of San Francisco."

This litigation is a proceeding in mandate, brought by taxpayers seeking the restoration of cable car service on that portion of the former Washington-Jackson Cable Car Line which operated west of Hyde Street. During the past year, after extensive trial preparation, including pre-trial proceedings, motions concerning interrogatories, and preliminary briefing, this matter went to trial, which trial lasted for a total of ten weeks over a period of three months. As a result of this trial, the Superior Court ordered, by an interlocutory writ of mandate, that the Public Utilities Commission and the Board of Supervisors conduct proceedings for the abandonment of the cable car line under Section 132.1 of the Charter. Such proceedings were conducted and the matter is now being returned for further hearing before the Superior Court pursuant to the interlocutory writ of mandate.

Other cases involving the Municipal Railway during the past year were the defense of an action for an alleged nuisance arising in connection with the operation of a bus terminal, and of a writ of mandate reviewing dismissal of a Railway employee.

Other matters undertaken for the Railway which did not involve litigation included review of the status of charter service offered by the Municipal Railway, preparation and issuance of opinions relating to Municipal Railway employee matters, preparation of the lease whereby the new fare boxes and coin assorters were obtained, preparation of a modification of the diesel coach lease, and review of various municipal ordinances pertaining to Municipal Railway operation.



## F. PUBLIC UTILITIES COMMISSION

Meetings of the Public Utilities Commission are attended by the Public Utilities Counsel, advice is given and questions are often referred for further legal study. In such connection formal or letter opinions are frequently rendered. In the course of the past year this office prepared a draft of rules of order for the conduct of Public Utilities Commission meetings, which were adopted by the Public Utilities Commission.

This office also regularly attends disciplinary proceedings conducted by the Manager of Utilities and advises on any legal questions arising in the course of such proceedings.

## RATE DEPARTMENT

This year was marked by the City's participation in the California Public Utility Commission's investigation concerning the proper treatment for rate-making purposes to be accorded accelerated amortization and accelerated depreciation. The investigation opened on the Commission's own motion on September 24, 1958, and was finally concluded on May 22, 1959 after 45 days of public hearings and the introduction of 74 exhibits.

The question of whether the tax savings gained by the selection of alternate methods of depreciation accounting contained in Sections 167 and 168 of the Internal Revenue Code should be retained by the utilities for plant expansion as cost-free capital, or some portion thereof, or returned to the consumer in the form of lower rates is to be determined by the Commission. To San Francisco residents the tax savings on their gas and electric bills alone would have amounted to approximately \$1,810,600 last year. At present, the Pacific Gas and Electric Company does avail itself of the fast tax write-offs allowed by the Code. However, the Telephone Company has never taken advantage of the fast tax write-offs due to its alleged inability, in some of its accounts under present accounting practices, to comply with the Internal Revenue Department requirements. The decision to be rendered in Case 6148 will determine the procedure that will follow in future rate cases and the various companies will be guided accordingly. Other matters handled by the Rate Department are included under the following categories.

### A. ELECTRIC

The Pacific Gas and Electric Company did not file for any general increase in electric rates during the year, having just completed a major rate case in the Spring of 1958 in which an overall increase of 5.16% was granted. The present rates paid





by the average domestic householder in San Francisco for 200 k.w. of energy per month is \$9.69, as compared to \$13.92 for the same amount of energy in the rural areas, where the highest domestic schedule is applicable.

## B. GAS

Effective on July 29, 1958, Decision No. 56967 of the California Public Utilities Commission increased all gas rates of the Pacific Gas and Electric Company by approximately 3.96%. This increase was a culmination of proceedings that started in the first part of 1957 and the history covering the hearings and decisions was set forth in last year's annual report.

On or about January 13, 1959, El Paso Natural Gas Company filed an application with the Federal Power Commission seeking authority under the Natural Gas Act to increase its rates and charges for gas sold to, among others, Pacific Gas and Electric Company. On January 28, 1959, El Paso filed revised tariff sheets. On February 27, 1959, the Federal Power Commission suspended the El Paso increase pursuant to provisions of the Natural Gas Act. However, the proposed rates automatically went into effect August 1, 1959, and at some future date the Federal Power Commission will, after public hearing, determine if the full increase is warranted. This necessitated the Pacific Gas and Electric Company to file for an offset increase to cover this additional cost of gas. Hearings were held and the matter was submitted to the Commission on June 29, 1959 for decision.

San Francisco offered evidence and cross-examined Company and other witnesses on the proposed increase and how this increase is to be spread to the various classes of service. The Company proposal will assign about 83% of the increase to firm customers and 17% to the interruptible customers. The increase that El Paso will charge Pacific Gas and Electric Company after August 1, 1959, will be 3.6¢ per thousand cubic feet of gas and would apply to 70% of the Company's purchases. The other 30% is purchased within California and not subject to the 3.6¢ increase. On a uniform per m.c.f. basis the average cost to all classes of customers would be 2.67¢ per thousand cubic feet, but under the Company's proposal of 83% of this increase to be borne by the firm customers, 4.95¢ per thousand cubic feet will be required in order to increase the gross revenue by \$13,000,000.

At the present time the Pacific Gas and Electric Company has an application before the Federal Power Commission, Docket G-17352, and the California Public Utilities Commission, Application 40738, for the importation of natural gas from Canada. The Company first made application October 22, 1957, to the Oil and Gas Conservation Board of Alberta, and after certain revisions over an extended period of time a favorable decision by the Oil and Gas Conservation Board was rendered. This decision was for a lesser



amount of gas than the Pacific Gas and Electric Company had originally requested. Hearings before the Federal Power Commission and the California Public Utilities Commission on this matter will probably be held this coming Fall.

#### C. STEAM

Steam heat rates for the downtown customers of the Pacific Gas and Electric Company system were increased this last fiscal year by approximately 73%. For many years the system has operated at a loss and the company applied to the California Commission for an increase that would allow it to earn a rate of return of 4.3% on its operations. This office did not object to the increase but only to the method of application. The Company proposed to increase the rates immediately, but this office successfully argued that any increase of the magnitude requested by the Company should be spread over a period of time (Tuolumne Water System - Pacific Gas and Electric Company, 55 CPUC 556 (1957)). The decision allowed one half of the increase to become effective January 1, 1959, amounting to \$159,000, and a similar amount on January 1, 1960. The present customers (approximately 494) were thus relieved of an additional \$159,000 in increased rates for the calendar year 1959, or equivalent to an average of \$322 per customer.

#### D. TELEPHONE AND TELEGRAPH

This past year has produced no new increases in telephone rates since the Company was granted a major increase in May of 1953. The Company has continued to grow and is expending large sums of money both in San Francisco and the State of California trying to keep pace with the increasing population. The number of new telephones installed in the City and County of San Francisco for the year 1953 was approximately 12,870. This is a sizable number considering that the geographical limits of San Francisco have not changed for many decades.

Western Union Telegraph Company, by Application No. 40334, requested an increase in intrastate rates to correspond with increases granted by the Federal Communications Commission for interstate service in order that a uniform charge will exist in all of the 49 states for intrastate as well as interstate messages. Western Union's interstate business accounts for 85% of the total, and with the proposed intrastate rates the company will still not meet all of its intrastate expenses. In order to maintain uniformity interstate, no additional increase was requested. Based upon the facts presented, no objection to the increase was made by this office.





## E. TRANSPORTATION

This past year was marked by an increase in public transportation matters affecting the City and County of San Francisco. New taxicab rates were approved on August 11, 1958, by the Board of Supervisors after rejecting a previous request for increased rates in the preceding fiscal year. With reluctance the fare was increased 10¢ per mile with the flag rate set at 50¢. Increased operating costs necessitated the increase in fares.

In other matters the City was represented by this office in the discontinuance of local trains between San Francisco and San Jose before the California Public Utilities Commission and the curtailment of service between San Francisco and Portland, Oregon, of the SHASTA DAYLIGHT held before the Interstate Commerce Commission. The SHASTA DAYLIGHT during the year 1958 carried an average of 432 passengers per day, with 190 passengers either arriving at or departing from San Francisco. The Southern Pacific proposed to reduce the DAYLIGHT to a tri-weekly service for approximately 7-1/2 months out of the year. The patronage is very high during the summer months and the Christmas holiday season. During the other months patronage drops to around 300 passengers per day as compared with the peak month number of 670. The Interstate Commerce Commission in its decision allowed the reduction in service and a petition is now pending for reconsideration and oral argument before the full Commission by both the California Public Utilities Commission and the Oregon Commission.

San Francisco was a respondent, along with San Mateo County, in Case No. 6202, a Commission-instituted investigation concerning a railroad crossing on the old Bayshore Highway just south of the city limits of San Francisco. The Southern Pacific Company held that any additional crossing protection required due to a change of switching hours (1 a.m. to 6 a.m.) to daylight and evening hours should be borne by the municipal government whose citizens would benefit from the added protection. The position of the City of San Francisco was that primary benefit would be to those residents who reside south of the city, and while the change of switching hours would benefit some of the residents of the city in the adjacent area, the primary purpose was to switch at times more convenient to the two industries being served in the area. In the decision rendered by the Commission, San Francisco's position was upheld and the cost of installing the additional protection was allocated 50% to the Company and 50% to the County of San Mateo. This resulted in a direct savings to the City of approximately \$2,500.



LEGAL OPINIONS RENDERED  
TO CITY DEPARTMENTS

One of the most important duties of the City Attorney under Section 26 of the Charter is to "give his advice or opinion in writing to any officer, board or commission of the city and county when requested." As legal adviser to the City and County of San Francisco and all of its departments, commissions and officers, I had occasion to issue 97 formal opinions during the fiscal year. Since my appointment as City Attorney on March 1, 1949, to the end of the fiscal year June 30, 1959, I have had occasion to render 1,238 legal opinions.

These opinions rendered by the City Attorney represent a thorough and careful research into the legal and factual background involved in the question presented and cite extensive authorities and the reasoning which lead to the conclusion and advice given to the department or officer requesting the opinion. When issued, these opinions become formal records of the City and County and serve as a guide to the City departments and officials in the day to day operation of their particular departments. Because of the vast number of such opinions which have been rendered, these departments, by reference to such opinions, have been able to dispose of the many problems confronting them without the necessity of requesting additional opinions.

The 97 opinions issued by me during the fiscal year have been rendered to the following departments:

Board of Supervisors	20
Department of Public Works	3
Fire Department	7
Controller	6
Civil Service Commission	5
Health Service System	5
Police Department	5
Recreation and Park Department	5
M. H. de Young Memorial Museum	3
Art Commission	2
City Planning Commission	2
Melvyn I. Cronin, Judge of the Juvenile Court	2
Mayor	2
Department of Finance and Records	2
Department of Public Health	2
Department of Public Welfare	2
Retirement System	2
Board of Permit Appeals	1
Chief Administrative Officer	1
Commission on Equal Employment Opportunity	1
County Clerk	1
Department of Electricity	1
Jury Commissioner	1
Laguna Honda Home	1





John L. Merrill, Member of Redevelopment Agency	1
Municipal Railway	1
Public Library	1
Public Utilities Commission	1
Real Estate Department	1
San Francisco Housing Authority	1
San Francisco Law Library	1
San Francisco Purchase and Use Tax Board	
of Review	1
Tax Collector	1
Treasurer	1

Besides the 97 formal opinions rendered above, much legal advice has been given to the City departments, commissions and officers through informal letters.

#### CONTRACT PREPARATION AND APPROVAL

Innumerable contracts were prepared during the past fiscal year by this office covering the activities of the City in both its governmental and its proprietary capacity. These involved public works, engagement of experts, furnishing of supplies and equipment under competitive bid, and transactions between the City and County of San Francisco and the United States or the State of California. Every contract in which the City was a party was approved as to form by the City Attorney as required by the Charter.

Of the many contracts that were prepared and reviewed by the City Attorney, one of the noteworthy ones was the contract between Avery Brundage and the City and County covering the gift by Avery Brundage to the City and County for the M. H. de Young Memorial Museum of the world famous Avery Brundage Oriental Art Collection, which is valued at in excess of \$15,000,000. In the preparation of this contract, meetings were held with Mr. Brundage and his attorneys in Washington, Chicago and San Francisco. The contract requires that as a condition of the gift extensive alterations and additions to the de Young Museum be made by the City for the purpose of housing the collection, which will make the City and County of San Francisco the center of Oriental Art not only of the United States but of the entire world. The contract provided that the gift was conditioned upon a favorable ruling from the Internal Revenue Department as to certain tax deductions in connection therewith. A joint request was made for a ruling by the City and County of San Francisco and Mr. Brundage and a favorable ruling has been received from the Internal Revenue Service.



## LEGISLATIVE DEPARTMENT

The office of the City Attorney has been active in the legislative field, both at the local level before the Board of Supervisors and at the State level before the State Legislature.

One of the deputies has been in attendance at every meeting of the Board of Supervisors held throughout the year and at every committee meeting, and has advised the Board and its members as to all legal problems which have arisen in connection with matters under consideration by the Board. All legislation enacted by the Board of Supervisors has been reviewed and legally approved. All prepared Charter amendments under consideration have also been reviewed and approved before submission to the voters.

At the State level, in connection with the 1959 Regular Session of the State Legislature, one of the attorneys from the office of the City Attorney was assigned as legal adviser to the State Legislative Representative of the City and County. All bills submitted to the Legislature were reviewed and the proposed legislation affecting the City and County was reported to the State Legislation Committee or the Board of Supervisors.

## REDEVELOPMENT AGENCY

The legal problems of the Redevelopment Agency have increased to such an extent that it has been necessary to employ two additional attorneys to handle the increased work load. It has also been necessary to use special counsel in the trial of condemnation proceedings involved in the Fellom case. Because of the many complicated legal problems involved in the redevelopment projects, particularly with reference to the Redevelopment Area E, a considerable portion of my time has been devoted to the problems of the Redevelopment Agency.

In addition to the work of the attorneys who are paid with Agency funds, it is necessary to use a regular member of my staff to prosecute and try condemnation actions involved in the Geary Street widening, which is the City's contribution to the Western Addition Project.

During the past year a number of condemnation actions have gone to trial. The most notable of these were the Del Camp and the Fellom cases.

In the Fellom case, after the Supreme Court of the United States denied him a hearing after ruling by the District Court of Appeal and the Supreme Court of the State of California on his injunction suit involving owner participation, it was necessary to try two issues, one involving the question as to





whether the Agency and the Board of Supervisors had discriminated against him in denying him the right to participate in the redevelopment of his property in the Diamond Heights area and, two, the issue of the market value of the property. The first issue was tried before a court without a jury and the trial lasted fifteen days. The court ruled in favor of the Agency on this issue. On the question of value, which was tried before a jury, the trial lasted twenty-two days. The experts for Mr. Fellom testified that his property was worth \$117,000 to \$150,000. The experts for the Agency testified that the property was worth \$41,000 to \$42,500. The jury awarded Mr. Fellom \$48,500.

In the case of City and County of San Francisco v. Del Camp Investments, Inc., which involved a large apartment house necessary for the Geary Street widening, the trial lasted approximately three weeks. Experts for the owner testified that the property was worth \$142,500. Experts for the City testified that the property was worth \$115,000 to \$117,250. The jury awarded Del Camp Investments, Inc. the sum of \$117,000. The Agency had offered Del Camp \$117,250 in settlement of this matter.

The case of Redevelopment Agency v. Stefan involved the condemnation of a three flat building which had been converted into twenty-four apartments and rooms. The City had tried for a number of years to abate the property as a public nuisance and received a judgment ordering the premises vacated just prior to the trial of the Agency's condemnation action. Experts for the owner testified that the property was worth \$21,000 to \$30,000. The Agency's experts testified the value to be \$13,800 to \$14,200. The jury awarded Mr. Stefan \$15,000.

On June 20, 1959, a suit was filed entitled Gold v. Redevelopment Agency of the City and County of San Francisco and City and County of San Francisco, requesting that the court issue a writ of mandate to compel the Agency to purchase the property of the petitioner located in Redevelopment Area E-1. The suit also asked for damages against the Agency and the City because the property owner has been unable to rent the property since the area has been designated for redevelopment. This matter is now pending before the court.

There were a number of smaller condemnation actions tried during this reporting period.

In addition to the condemnation actions brought on behalf of the Agency, it was necessary to file a large number of unlawful detainer actions in the Western Addition area. Most of the judgments in these cases were taken by default. In one case which went to trial, the tenant raised the issue that he was not offered comparable housing accommodations to which he could move before the suit was filed. The court finally ruled in favor of the Agency and ordered the eviction.



Most of the land in Diamond Heights has been acquired and it is hoped that the balance will be acquired before the end of the year.

In the Western Addition Project considerable property has been acquired by the Agency. One condemnation action was filed in this project involving more than one hundred parcels and another is being prepared which involves the balance of the property in Western Addition not now under condemnation proceedings.

The final plans for Redevelopment Area E were approved by the Board of Supervisors on May 25, 1959.

Considerable work is being done on this project in an effort to shorten the time between land acquisition and land disposition. The Agency has drafted a schedule which provides for the Agency undertaking both land acquisition and land disposition concurrently, thereby shortening the time to complete the project by approximately two and one-half years. The Agency staff, my staff, M. Justin Herman, and others involved, are holding meetings almost daily to work out the procedures and documents necessary to accomplish this result.

During the past session of the Legislature, two very important bills were passed which affected redevelopment in this community. One bill, S. B. 777, involved the authorization by the State to permit the Harbor Board to transfer to the Redevelopment Agency certain lands necessary for Redevelopment Area E. The other was S. B. 703, sponsored by the League of California Cities, which simplified to some extent the cumbersome California Community Redevelopment Law. This Bill eliminates the tentative plan stage and in future projects there will be only the preliminary and final plans. The deputy assigned to the Redevelopment Agency attended and participated in a number of the Committee hearings in Sacramento involving these bills and other bills. During the session of the Legislature a number of bills were submitted, one in particular dealing with owner participation, which, if passed, could have seriously hampered redevelopment in this state. We were successful in helping to defeat these measures.

The legal work in connection with the three redevelopment projects in San Francisco has been complicated and time consuming. In addition to the many meetings held involving these projects, it has been necessary to prepare and review contracts, agreements and documents of all types.

#### PARKING AUTHORITY

The work load of this office during the fiscal year 1958-1959 for services rendered to the Parking Authority has increased materially over that of the previous year. Complete





legal documents for the leasing and operation of public off-street parking facilities were prepared for five projects:

- (1) Civic Center Plaza Garage
- (2) Sutter-Stockton Garage
- (3) Marshall Square Parking Plaza
- (4) Alameda York Parking Plaza
- (5) Candlestick Park Parking Plaza

The Sutter-Stockton Garage project accounted for the major portion of these services. An amended complaint in condemnation (City and County of San Francisco v. Fong Wan, et al) was prepared and filed to acquire the outstanding leasehold interests. In addition, three unlawful detainer actions were filed to acquire possession of the premises. Two were successfully concluded without trial and one proceeded to trial and resulted in a judgment in favor of the City. To satisfy the requirements of the title insurance policy a complaint to quiet title against all persons under provisions of the McEnerney Act, so-called, was prepared and filed and this matter is presently pending before the court. Resolutions were drafted for the Board of Supervisors granting a revocable permit to maintain a ramp over Stockton Street and providing for the modification of the Stockton Street tunnel stairway so as to permit the ramp to connect with Bush and Stockton Streets.

This office participated in appearing before the Tax Ruling Division of the Internal Revenue Bureau in Washington, D. C., to obtain tax rulings on the bonds issued by the non-profit corporations to finance the construction of the Civic Center Plaza and Sutter-Stockton Garages. Favorable rulings were obtained to the effect that the interest on said bonds is exempt from Federal income taxes.

In the case of San Diego Maryland Hotel Building Corporation v. City and County of San Francisco, et al, the unsuccessful bidder for the operation of the Fifth and Mission Parking Facility sued the City and the Parking Authority for damages in the sum of \$380,000. A demurrer to said complaint has been filed and the matter is now pending.

One formal written opinion was rendered relating to compensation payable to tenants for damage to trade fixtures resulting from condemnation proceedings in the Sutter-Stockton Project.

During the year twenty-three regular and special meetings of the Parking Authority were attended by one of my deputies.



The legal services rendered to the Parking Authority, such as the preparation, review and discussion of agreements, leases, insurance policies, and the attendance of many conferences and meetings, continue to be varied and time consuming. With the additional new parking facilities presently in the planning stage, the demands of the Authority for legal services will continue to increase during the ensuing fiscal year.

## FRANCHISE MATTERS

In the action for declaratory relief brought by Pacific Telephone and Telegraph Company against the City and County of San Francisco, the company appealed after a judgment of the Superior Court rendered during the previous year in favor of the City and County of San Francisco. The Superior Court had determined that the City and County of San Francisco has the power to grant a telephone franchise and has the right to control the use of its streets and other public places as a municipal affair, as against the assertion of the company that it possesses a state-wide franchise under state law permitting such use without payment of compensation by it.

The appeal of the company was, after extensive briefing, argued by me before the California Supreme Court, which on March 17, 1959, rendered a decision reversing the judgment of the Superior Court. The Supreme Court held that the use of public streets for telephone facilities had been constituted a matter of state-wide concern by virtue of the state statutes involved and due to the state-wide nature of telephone operations. The Supreme Court did not determine the further question whether San Francisco would otherwise have had reserved powers to grant telephone franchises by virtue of its legal status as a chartered city before 1905, the effective date of state legislation conferring certain state-wide franchise rights on telephone companies.

After reversal of the prior judgment by the Supreme Court, the matter was remanded to the Superior Court for a new trial. The City and County of San Francisco received permission for, and filed, an amended answer which presents further defenses to the action of the company which were not heard or determined at the prior trial. This proceeding is now being prepared for retrial, which will take place in the near future.

On May 1, 1959, Pacific Gas and Electric Company filed a complaint for declaratory relief and damages against the City and County to recover the sum of \$81,830.32, alleged to have been expended by the company for relocation of its gas and electric facilities in connection with the construction of Brooks Hall, the newly constructed exhibit hall in the Civic Center. This controversy between Pacific Gas and Electric Company and the City and County will result in the determination of certain





legal questions defining the obligations of the company to relocate its facilities to allow the construction of municipal improvements. Pacific Gas and Electric Company has also filed a claim by reason of the relocation of its facilities for construction of the Civic Center Underground Garage. This office is conducting research and investigation in preparation for the defense of these matters.

Other franchise matters also were studied in the course of the year, such as the problems of pay television in connection with the use of streets and other public places, the determination of proper compensation under various franchises, and the effect of proposed legislation on municipal franchise powers. During the past session of the State Legislature measures dealing with pay television, with telephone franchises and with enlargement of the powers of the State Public Utilities Commission in the franchise field were all studied, and recommendations were made in regard to the official position, if any, which the City and County should take on such measures, with particular attention to the legal position of the City and County that the Municipal franchise field should be reserved for municipal regulation when use of streets or other public places is involved.

#### ABATEMENT AND CONDEMNATION OF PUBLIC NUISANCES

The increasingly vigorous enforcement of the building laws of the City and County and of the State in recent years has been reflected in an increase in case referrals from the Department of Public Health and the Department of Public Works to the City Attorney. Building law violations constituting a hazard to the public health or safety are brought to the attention of the Director of Public Health or the Director of Public Works by appropriate complaint under the provisions of the municipal codes. Where, after due hearing before the Administrative Officer, the owner of the property refuses or neglects to comply with the order of the Administrative Officer, the matter is referred to the City Attorney, with a request for appropriate legal action.

The policy of the City Attorney has been to afford one final opportunity to the owner of a building constituting a public nuisance to remedy the conditions by voluntary action. Mindful of the fact that most of the cases referred to the City Attorney's office involve owners who have theretofore manifested an uncooperative disposition, the interval of time granted to an owner by this office to permit voluntary compliance by the owner and avoidance of legal action against him is relatively short. Nevertheless, the fact that legal action is imminent as soon as the case is referred to the City Attorney appears to have had considerable effect in inducing a more cooperative spirit in the majority of offending owners, with consequent voluntary compliance by them with the orders of the Director of Public Works and Director of Public Health.



This conclusion is derived from the fact that of all abatement case referrals to the City Attorney, approximately two thirds are terminated without litigation.

Where prompt voluntary compliance with the orders of the Director of Public Works or Director of Public Health is not obtained, legal action seeking injunctive relief is instituted and vigorously prosecuted.

The number of deputies on our staff who devote a substantial part of their time and effort to these matters has been increased from five to seven, to handle the increased work load resulting from the increase in inspectors in the Department of Public Health and Department of Public Works.

During the past year a Municipal Housing Code was adopted. It provided for the establishment of a Housing Appeals Board having power to hear and decide appeals from orders of condemnation or abatement after public hearing made by the Director of Public Works or the Director of Public Health, with authority to affirm, modify or reverse such orders, having due regard for the underlying purpose of securing the public health, safety and welfare and the achievement of substantial justice in accordance with the intent and purpose of the Housing Code. The appointment of members to the Housing Appeals Board was recently accomplished. It is too early to permit a prediction of the probable effect on abatement and condemnation matters to be referred to the City Attorney's office during the coming year. The Housing Appeals Board did not commence actual operations during the period covered by this report.

The tabulation on the next page shows the number of matters that were successfully terminated by the office of the City Attorney during the past fiscal year, whether such terminations were litigated or non-litigated, the method of compliance, the number of referrals from the various departments, the number of actions filed during the year, the number of cases pending as of the close of the fiscal year and whether litigated or non-litigated.





# ABATEMENT MATTERS

July 1, 1958 - June 30, 1959

Department	Referrals during fiscal year	Actions filed in fiscal year	Cases Terminated in Fiscal Year			Method of Compliance			Cases Pending 6-30-59		
			Number	Liti-gated	Non-liti-gated	Demonstration	Rehabilitation	Other	Number	Liti-gated	Non-liti-gated
Public Works	66	39	37	13	24	24	10	3	129	70	59
Public Health	<u>28</u>	<u>15</u>	<u>9</u>	<u>4</u>	<u>5</u>	<u>2</u>	<u>5</u>	<u>2</u>	<u>45</u>	<u>23</u>	<u>22</u>
Total	94	54	46	17	29	26	15	5	174	93	81



## PUBLIC WELFARE DEPARTMENT

During the fiscal year 1953-1959, 42 cases were referred by the Public Welfare Department to the office of the City Attorney involving responsible relatives who refused to assume the obligation of contributing to the support of a recipient of Old Age Assistance. Of the said 42 cases, 29 were successfully concluded during the fiscal year and 13 were pending at the end of said fiscal year. At the commencement of the fiscal year 5 cases against responsible relatives on which Superior Court actions had been filed were pending from previous years and all of them were brought to a conclusion during the past year.

During the fiscal year 114 cases were referred to the office of the City Attorney due to the refusal of the responsible relative to submit a statement concerning his financial condition upon which the Board of Supervisors determines the extent of the fiscal liability, if any, of the relative for the support of the recipient of aid. As of June 30, 1959, 87 of said cases had been terminated and 27 were pending at the end of the said fiscal year.

## WORKMEN'S COMPENSATION LITIGATION

The Retirement System of the City and County of San Francisco, under Section 172 of the Charter, administers the benefit provisions of the workmen's compensation laws of the State of California. The City Attorney's office represents the City and the San Francisco City and County Employees' Retirement System in hearings on said workmen's compensation matters before the Industrial Accident Commission of the State of California.

The hearings usually fall into two categories:

1. Where the City denies liability for the alleged injury to the employee; or
2. Where the City contests the amount of disability alleged to have resulted from the injury.

The City Attorney has appeared at 65 hearings, averaging 5.4 per month, in which testimony was taken or evidence presented in behalf of the City and the Retirement System. The hearings varied in length from one-half hour to four hours, averaging generally about one and one-half hours.

Matters which have come to a decision before the Industrial Accident Commission are subject to appeals and petitions for reconsideration. The City Attorney's office has filed one appeal with the District Court of Appeal and twelve petitions for reconsideration. All the necessary legal papers and





documents in connection with the hearings, appeals and petitions for reconsideration are prepared by the City Attorney's office.

The City Attorney also represents the Retirement System in the matter of the subrogation of claims of the System against a third party who has caused injury to a City employee. In this way, the Retirement System is often able to obtain reimbursement of the amount the City has expended for the employee's benefit as a result of his injury.

Where the injured City employee commences an action in his own behalf against the third party causing his injury, the City has the right to intervene in the action to recover the benefits paid to the City employee because of his injury. In addition, the City has the right to file suit in its own behalf against the third party causing injury to a City employee. During the past year, the City Attorney's office has filed 3 suits in intervention and 2 independent suits. An additional 5 suits, previously commenced, are pending and 10 matters are under consideration with a view to instituting suit.

On several occasions a lien has been successfully employed to recover moneys for and on behalf of the City.



## CONCLUSION

In your letter of August 15, 1959, requesting the annual report of the City Attorney, you listed six items on which you desired specific information. The following is my reply to the six matters referred to in your letter:

1. Comment on the Progress  
of Capital Programs

This matter is inapplicable to my department so no reply is made thereto.

2. Suggestions or Recommendations with  
Respect to the Activities of the  
City Attorney's Office or to City  
Affairs Generally

Two urgent requests have been made by me annually, in the annual reports for the years 1951-1952 through 1957-1958, and I feel it again necessary for me to reiterate the matters which were discussed in those reports.

(a) Inadequacy of the Quarters  
in which the City Attorney's  
Office is Now Located

It was pointed out in my report of last year that if the bond issue for the construction of a new Court House and for the renovation and rehabilitation of the City Hall were successful the problems of the City Attorney's office as to adequate quarters would eventually be solved. The bond issue failed and the problem of adequate quarters for the City Attorney's office is still before us, and no solution has been presented to me which would solve our problem.

In the past year, there has been an increase in the staff of the City Attorney's office of four attorneys for the specific problems of urban renewal and redevelopment. With this additional staff, plus one new clerical position, quarters on the third floor were made available to the City Attorney for the purpose of housing the attorneys presently working on redevelopment and urban renewal matters. While this represented additional space for the City Attorney's office, the additional space is barely sufficient to take care of the increase in staff, so that the problem which was referred to in the prior reports, as stated above, is still before us.

The problem I refer to is the following: Inadequate office space for attorneys; inadequate quarters for the stenographic and clerical force, and lack of proper library facilities.





The hallway of the City Hall proper many years ago was blocked off on the entire southeast portion of the building, to be used for library facilities. While these library facilities were inadequate to commence with, they have been rendered practically useless for library purposes by the necessity of moving a portion of the stenographic staff into this area because of lack of space. Additionally it has become necessary to use this area as a meeting place and a waiting room for prospective witnesses and visitors to the office. As a consequence the library area has been rendered practically valueless to the City Attorney's office for library purposes.

As to adequate space for attorneys, I pointed out in the past that many of the private offices of the attorneys have no windows and are unsuitable for the purpose for which they are used, and that at least eleven attorneys have no private offices, but rather share quarters with as many as six attorneys in one area. The offices of half of the attorneys can only be reached by passing through the offices of other attorneys, a situation which greatly interferes with the orderly work of the attorneys, such as interviewing of witnesses, taking of depositions, and general office work.

It is therefore urgently requested that consideration be given immediately to more adequate quarters for attorneys for the performance of the work of the City Attorney's office.

(b) Necessity for Increase of Staff

My second request concerns the necessity for an increase of the staff because of the continued increase of the work being required of the office.

As I have already mentioned, there was an increase in the past year of four attorneys for the specific problems of urban renewal and redevelopment. These positions were necessitated by the greater activity in the field of redevelopment, such as in the acquisition of land and the Golden Gate Project, and because of the increased work in the field of urban renewal. In this latter field, there has been a steady and continuous increase in the number of the staff of other City departments inspecting the structures in the City and County of San Francisco, with the natural result being a substantial increase in the referrals by such departments to the office of the City Attorney for the abatement of nuisances and condemnation of buildings not in conformance with the state law and municipal codes.

The most important problem throughout the entire State facing both the state and local governments is the water problem. In the 1957 Regular Session of the Legislature a long range water program was adopted by the State. Two interim committees, one a Senate Interim Committee, and the other an Assembly Interim Committee, were appointed to make a survey of water problems in the



State. Additionally various district committees have been formed for the same purpose. Meetings will be held by all of these committees in various parts of the State. I have continuously requested in the past the creation of a new legal position in the City Attorney's office so that I might have an attorney on my staff working solely on the water problems confronting the City and County and the State. At the meetings of the water committees referred to above, I feel it is of great importance that there be an attorney from this office in attendance, as well as an engineer from the Water Department, to protect the City's interests. The appointment of an attorney in the office of the City Attorney to devote his time to water problems is a matter of great urgency and necessity, and I again reiterate my request that such legal position be created in the office of the City Attorney.

3. Comparison of Expenditures for all Appropriations, Other Than Those for Personal Services, with Original Budget Appropriations for 1958-1959

Please be advised that for the year 1958-1959 our budget requests have in all cases approximated the annual cost or expenditure.

4. Comparison of Revenues with Revenues Estimated in Budget of 1958-1959

The only revenues received by the City Attorney's office are interdepartmental transfers and revenues from the Redevelopment Agency for the compensation of legal and stenographic positions doing redevelopment work. Therefore, no comment on this item is necessary. I do wish to point out, however, that the office of the City Attorney was instrumental in collecting in excess of \$69,000 for various City departments and the amounts collected were distributed to the said City Departments for deposit as required by law.


5. Comments on the Two Previous Items

No comment is necessary here.

6. Statistics on Work Accomplished

The statistics as to the work accomplished have been set forth in detail in other portions of the report relative to the particular work or division of the City Attorney's office.

Respectfully submitted,



DION R. HOLM  
City Attorney





DOCUMENTS DEPARTMENT

MAY 5 1965

SAN FRANCISCO PUBLIC LIBRARY

# **ANNUAL REPORT**

of the

# **CITY ATTORNEY**

CITY AND COUNTY OF SAN FRANCISCO

July 1, 1959 - June 30, 1960



Dion R. Holm  
City Attorney



# **ANNUAL REPORT**

of the

## **CITY ATTORNEY**

**CITY AND COUNTY OF SAN FRANCISCO**

**July 1, 1959 - June 30, 1960**



**Dion R. Holm**  
**City Attorney**





ENCE S. MANA  
DEPUTY CITY ATTORNEY

ND P. BERGEROT  
IEF TRIAL DEPUTY

Y CITY ATTORNEYS

ORMAN SANFORD WOLFF

WESLEY DAVIS

RL BENNEHOFF

ARNARD J. WARD

ORGE E. BAGLIN

DMAS J. BLANCHARD

ILLIAM F. BOURNE

ONALD J. KROPP

HN ELMER BARRICKLO

OMAS A. TOOMEY, JR.

ROME COHEN

ONES O'BRIEN SMITH

RANK J. NEEDLES

ORGE P. AGNOST

ORLEY GOLDBERG

ILLIAM E. MULLINS

OBERT M. DESKY

AMUEL E. YEE

YMOND J. REYNOLDS

## DION R. HOLM

### CITY ATTORNEY

CITY HALL

SAN FRANCISCO 2, CALIFORNIA

HEMLOCK 1-1322

THOMAS M. O'CONNOR  
PUBLIC UTILITIES COUNSEL

#### DEPUTY CITY ATTORNEYS

PATRICK R. KELLY

JOHN J. TAHEY, JR.

THEODORE J. LITTLE

McMORRIS M. DOW

THEODORE F. BOFINGER

PAUL J. DINOIA

ORVILLE I. WRIGHT

ROBERT A. KENEALEY

DONALD J. GARIBALDI

MICHAEL B. FOLEY

JAMES J. STARK

ROLAND J. HENNING

ROBERT A. BORDEN

EDMUND A. BACIGALUPI

BEATRICE CHALLISS

G. R. DOUGHERTY

PAUL B. HOLM  
ADMINISTRATIVE ASSISTANT

ROBERT R. LAUGHEAD  
CHIEF VALUATION AND  
RATE ENGINEER

September 12, 1960

The Honorable George Christopher  
Mayor of the City and County of San Francisco  
200 City Hall  
San Francisco 2, California

My dear Mayor Christopher:

In answer to your directive of August 15, there follows  
my Annual Report to you describing some of the work concluded by  
this office for the fiscal year 1959-1960.

The past fiscal year was no exception to the preceding  
ones as to the increase of the legal work arising out of the  
performance of duties of all elected officials, commissions, and  
heads of departments. The growth of the proprietary functions as  
well as those of the municipal side of the city's activities result  
in a greatly increased legal burden.

As I have in the years past repeatedly emphasized I again  
reiterate, the present staff of attorneys is too limited to  
adequately conduct the legal business of the city and the  
space in which the members of the staff work is grossly inadequate.

Yours truly,

*Dion R. Holm*  
DION R. HOLM  
City Attorney



# TABLE OF CONTENTS

	<u>Page</u>
Litigation Department . . . . .	1
A. Tort Litigation . . . . .	1
1. Municipal Railway . . . . .	2
2. Other Departments . . . . .	3
(a) Public Works Department . . . . .	4
(b) Departments other than Department of Public Works . . . . .	5
Recapitulation of Statistics on Tort Litigation . . . . .	5
B. Other Litigation . . . . .	6
C. Appellate Litigation . . . . .	6
Public Utilities Department . . . . .	10
A. Airport . . . . .	11
B. Hetch Hetchy Water Supply, Power and Utilities Engineering Bureau . . . . .	16
C. Bureau of Light, Heat and Power . . . . .	17
D. Water Department . . . . .	17
E. Municipal Railway . . . . .	20
F. Public Utilities Commission . . . . .	21
Rate Department . . . . .	22
A. Electric . . . . .	23
B. Gas . . . . .	24
C. Telephone . . . . .	25
D. Transportation . . . . .	26
Legal Opinions Rendered to City Departments . . . . .	28
Contract Preparation and Approval . . . . .	29
Legislative Department . . . . .	30
Urban Renewal--Abatement and Condemnation of Public Nuisances . . . . .	31
Parking Authority . . . . .	32
Redevelopment Agency . . . . .	35
Franchise Matters . . . . .	37
Workmen's Compensation Litigation . . . . .	39
Public Welfare Department . . . . .	40
Conclusion . . . . .	41





ANNUAL REPORT  
OF  
CITY ATTORNEY DION R. HOLM

July 1, 1959 - June 30, 1960

The City Attorney is the chief legal officer of the City and County of San Francisco and his duties as prescribed by Section 26 of the Charter provide, among other things, that he must represent the City in all actions and proceedings in which it may be legally interested, or for or against the City and County, or any officer of the City and County; that he must give his advice and opinion in writing to officers, boards and commissions of the City and County; that he must prepare or approve as to form all ordinances, bonds and contracts of the City and County of San Francisco.

As the City and County of San Francisco is both a city and a county, the City Attorney performs the duties ordinarily performed by the County Counsel in all matters wherein the City and County of San Francisco is acting as a county.

There is detailed in this annual report of the City Attorney a statement of the activities of the office of the City Attorney for the fiscal year July 1, 1959 to June 30, 1960.

LITIGATION DEPARTMENT

The City and County carries on a multitude of activities of both a governmental and a proprietary nature, and in connection with the said activities much litigation arises in which the City is either a party defendant or a party plaintiff. A great proportion of the work handled by the office of the City Attorney involves representation of the City departments and officers in these matters which are the subject of litigation. The litigation in which the City and County is involved falls into several categories, as set forth below.

A. TORT LITIGATION

Tort litigation in which the City and County is named defendant for personal injury or property damage alleged to have been received constitutes the greatest volume of litigated matters handled by the office of the City Attorney. Such tort litigation arises generally from the operation of the Municipal Railway or from governmental activities performed by the City and County wherein



governmental immunity has been waived under the Public Liability Act of 1923, the Motor Vehicle Code, or other statutes.

The preparation of such matters for trial involves extensive work by the members of the staff, particularly since the new discovery procedures which have been instituted under State law and the commencement of the pre-trial procedure by the superior courts of the State of California

The work of the office in the preparation of these cases involves a review of the investigation, arranging for medical reports to determine the extent of injury, the taking of depositions of the parties to such actions, the pre-trial hearing of the particular case and, finally, the disposition of the case by settlement or trial.

During the fiscal year 1959-1960 the following number of depositions were taken:

Municipal Railway cases . . . .	673
Non-Railway cases . . . . .	<u>170</u>
Total . . . .	843

1. Municipal Railway

The Municipal Railway, the transit system operated by the City and County, accounts for the greatest volume of tort litigation handled by the City Attorney's office each year. Following is a table illustrating the work done for the Municipal Railway during the last fiscal year:

Actions filed . . . . .	424
Actions tried, settled or dismissed . . . . .	412
Actions pending at end of fiscal year . . . . .	761
Prayers of actions pending at end of fiscal year . . .	\$22,247,742
Claims filed against Municipal Railway . . . . .	2,655

This office also rendered services to the Claims Department of the Municipal Railway. In respect to the settlement of claims, except those under \$500, a review is made by this office and a valuation for the purpose of settlement is made on each claim. Written approval of each settlement is given to the Public Utilities





Commission and the Controller. Releases and other closing papers are also approved in each instance. During the fiscal year 1,612 such non-litigated claims were settled by the Claims Department after rendition of services in regard thereto by this office.

Of the 412 litigated cases which were disposed of as referred to above, the total of the prayers in said cases was \$8,116,326, and the amount paid by the City in the disposition of said 412 cases was \$722,853, which amount was 8.91% of the total prayers. Following is a breakdown of the cases referred to above:

	<u>Number</u>	<u>Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
<u>Judgments</u>				
Paid	59	\$2,070,367	\$ 248,533	12.0
Won or dismissed	<u>126</u>	<u>1,141,931</u>	<u>--</u>	--
Total Judgments	185	\$3,212,298	\$ 248,533	7.7
<u>Litigated Settlements</u>	<u>227</u>	<u>\$4,904,028</u>	<u>\$ 474,320</u>	9.7
Total Judgments and Litigated <u>Settlements</u>	<u>412</u>	<u>\$8,116,326</u>	<u>\$ 722,853</u>	8.9

The City Attorney's office also appeared at coroner's hearings and hearings of the criminal division of the Municipal Court where there was the probability of substantial damage claims being subsequently filed against the City and County. Numerous street car, bus and trolley coach operators were represented at such hearings by this office. During the fiscal year this office assisted periodically at meetings of management, operations and personnel of the Municipal Railway, and participated in their discussions and conferences which concerned matters of safety precautions, equipment, public relations and training of personnel.

## 2. Other Departments

Tort litigation other than Municipal Railway, which has already been discussed, involving the City and County arises generally from statutes wherein governmental immunity from suit has been waived under the provisions of the Public Liability Act of 1923 or the Motor Vehicle Code of the State of California. The trend on the part of the courts has been toward a greater liberality in the interpretation of statutes, and there has also been greater liberality in the actions of judges and juries in the award of damages in



such cases. As a consequence, throughout the nation there has been a great increase in the amounts which have been paid by municipalities in such damage actions. This has also encouraged a greater number of lawsuits to be filed against all municipalities.

While such actions involve practically all governmental departments of the City and County, the greater number arise from the operations of the Department of Public Works, which is charged with the responsibility of maintaining our streets, sidewalks, sewers, and other public works.

During the fiscal year there were 706 claims filed against all departments of the City and County exclusive of the Municipal Railway.

(a) Public Works Department

During the fiscal year, 78 cases involving the Department of Public Works were disposed of by the City Attorney's office, either through settlement or court action. These cases involved actions arising from the condition of sidewalks, curbs or roadways, sewers or equipment of the Department of Public Works. Following is a breakdown of the cases disposed of and the amount paid:

<u>Number of Cases Disposed of</u>	<u>Total Prayers</u>	<u>Total Amount Paid</u>	<u>Percentage</u>
78	\$1,531,258	\$55,129	3.6

Sidewalk Cases

As I have also indicated in the past, more than fifty per cent of the cases in which the Department of Public Works is involved arise from actions wherein it is alleged that there is a dangerous and defective condition of its sidewalks under the Public Liability Act of 1923.

A review of last year's activities concerning sidewalk cases indicates the amount paid out by the City and County of San Francisco has been held to a minimum. Following is a summary as to sidewalk cases disposed of during the year 1959-1960:

<u>Number of Cases Disposed of</u>	<u>Amount of Prayers</u>	<u>Amount Paid</u>	<u>Percentage</u>
44	\$1,131,855	\$36,943	3.26





(b) Departments other than  
Department of Public Works

A substantial number of tort cases arise from the operation of other departments of the City and County, particularly the San Francisco Unified School District, the Recreation and Park Department, the Police Department, the Health Department, and other such City departments.

A summary of the disposition of the cases of said departments follows:

Department	Number of Cases Disposed of	Total Prayers	Total Amount Paid	Percentage
Water	23	\$ 370,089	\$ 57,023	15.41
Recreation and Park	10	370,357	3,733	1.00
Police	8	187,248	18,850	10.00
S. F. Unified School District	7	243,653	13,700	5.64
Fire	4	358	150	41.90
Public Health	4	3,520	--	--
Real Estate	2	53,000	--	--
Adult Probation	1	40,000	--	--
Airport	1	50,735	--	--
Purchasing	1	77,000	--	--
War Memorial	1	150	--	--
Electricity	1	486	--	--
Sealer of Weights and Measures	1	50,583	--	--
Library	1	2,554	750	29.37
Total	65	\$1,449,733	\$94,206	6.49

Recapitulation of Statistics  
on Tort Litigation

Department	Number of Cases	Amount of Prayers	Amount Paid	Percentage
Public Works	78	\$ 1,531,258	\$ 55,129	3.60
Other governmental departments	65	1,449,733	94,206	6.49
Total	143	\$ 2,980,991	\$149,335	5.01
Municipal Railway	412	8,116,326	722,853	8.91
<u>Total of all tort litigation</u>	<u>555</u>	<u>\$11,097,317</u>	<u>\$872,188</u>	7.86



## B. OTHER LITIGATION

Other than the tort litigation reported above, the City and County was involved in substantial litigation during the fiscal year 1959-1960 arising generally from the activities of the various departments, board and commissions and officers of the City and County. Detailed reports as to some of this litigation are set forth in this annual report under separate headings and departments, such as the litigation in connection with the Public Utilities Commission, the Redevelopment Agency, the Parking Authority, the Public Welfare Department, and in connection with the abatement and condemnation of public nuisances and franchise matters.

Generally, the other litigation in which the City and County was involved, other than that reported under separate headings, infra, arose from the following activities: Eminent domain actions for the acquisition of private property for public purposes, such as the Geary Street widening, and McLaren Park, and the acquisition of sites for school projects; mandate and injunction actions against the Civil Service Commission, the Police Department, the Department of Public Health, the Fire Department, the City Planning Commission, and the Board of Permit Appeals; declaratory relief actions against the San Francisco City and County Employees' Retirement System and the Police Department; actions for alleged breach of contract for construction of public works and for the refund of taxes illegally or erroneously collected; and actions to sustain the validity of municipal ordinances and to restrain violations of such ordinances.

## C. APPELLATE LITIGATION

As usual, this office during the past fiscal year was involved with the arduous and meticulous work of representing the City and County on appeals from the judgments of trial courts before the appellate courts. During this period there was one such case decided by the State Supreme Court; fifteen decided by the District Court of Appeal of the State of California; and one appeal determined by the Appellate Branch of the Superior Court.

Some of the significant appellate cases determined or submitted in this fiscal year will be discussed briefly.

Cohen v. Cahill, et al., was tried before the United States District Court. Plaintiff claimed a breach of his civil rights by an alleged police "roust." The cause was dismissed as frivolous in the trial court. Plaintiff then appealed to the United States Circuit Court of Appeals. The case has been briefed, argued and submitted. As this report goes to press the Circuit Court directed a new trial.

Carrico & Gautier v. City and County of San Francisco, 177 A.C.A. 105 (Jan. 13, 1960). Plaintiff construction company built four recreation centers for the City and County on contracts totaling





a cost of \$840,000. After alleged performance the Company sued for damages and compensation for extra work. City cross-complained for alleged deficiencies in performance. After trial, Company was denied damages, allowed payments for extra work and the City was allowed judgment on cross-complaint. On appeal, the judgment was affirmed as modified. Result, City paid approximately \$7,200 and collected about \$21,200.

The Appellate Department of the Superior Court in and for the City and County of San Francisco determined in Pucci v. City and County of San Francisco (Municipal Court No. 417048; Appellate No. 2603) that the claim of the plaintiff which failed to specify the amount of damages was fatally defective.

A point in administrative law was established by the District Court of Appeal, First Appellate District, Division Two (18,539), in Willie B. Eashman v. City and County of San Francisco, 179 A.C.A. (No. 4) 850, April 18, 1960. In this case the trial court had issued a writ of mandate to compel the City and County to restore Eashman to his former position of Municipal Railway garage-man from which he had been discharged for inattention to duties.

The District Court of Appeal in reversing the judgment held that the trial court, after finding that Eashman had been denied a fair hearing by the Manager of Utilities, exceeded its jurisdiction in ordering Eashman to be restored to his position. The trial court had authority only to set aside the order of the Manager of Utilities and direct that Eashman be afforded a full and fair hearing.

Important law was established also by the decision of the State Supreme Court in City and County of San Francisco, et al., Petitioners, v. Superior Court of City and County of San Francisco, et al., 347 P. 2d 294. Plaintiff Kavanagh sought a building permit to construct an apartment house on his property at Leavenworth and Bay Streets in San Francisco. The proposed building, under the plans as amended, would comply with all presently effective and relevant city ordinances, but by a vote of four to two the Planning Commission denied the application. Kavanagh appealed to the Board of Permit Appeals which, after hearing, overruled the Planning Commission's order of denial. The order of the Board of Permit Appeals was submitted to the Superior Court of San Francisco for test of its legality and that court proposed to require the order of the Board to be vacated. Thereupon the City and County and Mr. Kavanagh sought a writ of prohibition to restrain the Superior Court from its proposed action. The issue presented was one of law entirely; the facts were not in dispute. Respondents attacked the action of the Board of Permit Appeals and Section 39 of the Charter under which it operates as unconstitutional because it was alleged the Board was unguided by adequate standards. The court rejected this argument as it found the Charter and the ordinances to prescribe fully the conditions which must be met and the permit procedures. The court reaffirmed the constitutionality of the



function of the Board of Permit Appeals which it had sustained in Lindell Co. v. Board of Permit Appeals (1943), 23 Cal. 2d 303, 144 P. 2d 4. The point was made that the Board of Permit Appeals was controlled by the same rules that controlled the City Planning Commission and the other building administrators of the City, including the Central Permit Bureau. The proposed action of the Superior Court would be based on these same rules and on the ruling of an inferior administrative unit, the City Planning Commission, which the Board of Permit Appeals could, under the Charter, in their discretion overrule. The members of the Planning Commission who opposed the granting of this permit were erroneously attempting to apply the requirements of a "new" zoning ordinance passed but not effective.

Maintenance machinists of the City and County sued the City and County to challenge their rates of pay as certified by the Civil Service Commission and fixed by the Board of Supervisors for the fiscal years beginning July 1, 1952 and ending June 30, 1956. The rates fixed were identical with the rate prescribed for maintenance machinists by union contract with the California Metal Trades Association (C.M.T.A.). These were established by collective bargaining agreements between private industry in San Francisco and their maintenance machinists.

Plaintiffs claimed that their duties and responsibilities are more varied, onerous and call for a higher degree of skill than that required of the maintenance machinists of the C.M.T.A. They asked that they be paid under Charter §151.3 by the collective bargaining rates established for maintenance machinists with breweries and newspaper houses, or if not, at \$2.88 per hour under §151 of the Charter for the fiscal year beginning July 1, 1955.

Briefly, §151 provides that the City and County workers be paid in accord with the generally prevailing rates of wages for like service and working conditions in private employment or in comparable governmental organizations in this state. It provides also that specialized services peculiar to municipal service and not duplicated elsewhere in private or other governmental organizations shall be specially determined. Section 151.3 defines the basis of standardization of compensation.

On Appeal from Judgment for defendant City and County of San Francisco, the District Court of Appeal in Miller v. City and County of San Francisco, 174 C.A. 2d 109, upheld the action of the City and County. Appellants' petition for a hearing by the Supreme Court was denied November 25, 1959.





SUMMARY OF APPELLATE CASES

<u>Municipal Department Served</u>		<u>Court</u>
Police Dept.,	1	U. S. Circuit Court of Appeals
Recreation & Park Dept.,	1	District Court of Appeal
Public Works,	1	Appellate Dept., Superior Court
Civil Service Commission,	2	District Court of Appeal
Public Works,	1	State Supreme Court
Public Works,	3	District Court of Appeal
Municipal Railway,	6	District Court of Appeal
Juvenile Probation Dept.,	1	District Court of Appeal
Public Health Dept.,	1	District Court of Appeal
Water Dept.,	1	District Court of Appeal
<hr/> TOTAL		18



## PUBLIC UTILITIES DEPARTMENT

A large share of the legal work of the City Attorney's office is performed for the Public Utilities Commission and the various departments under its supervision, including the San Francisco International Airport, the Hetch Hetchy Water Supply, Power and Utilities Engineering Bureau, Bureau of Light, Heat and Power, Water Department and Municipal Railway.

In order to organize and process this volume of legal work there is a Public Utilities division of the City Attorney's office which operates under the supervision of the City Attorney and the Public Utilities Counsel. Deputy City Attorneys are assigned to Public Utilities Commission work in this division pursuant to the provisions of Section 126 of the Charter.

The work undertaken for the various departments under the Public Utilities Commission falls for the most part into three categories. First is the handling of litigation and the conduct of administrative proceedings. Litigation is conducted in both federal and state courts and it is particularly noteworthy that due to the property interests of San Francisco in adjoining counties, much of it is necessarily conducted within said counties. In regard to administrative proceedings it is to be noted that in recent years the number, scope and complexity of such proceedings have increased enormously. Such proceedings now take place before the Civil Aeronautics Board, the State Board of Equalization, the State Water Rights Board, the United States Department of the Interior, the State Lands Commission and other federal, state and local agencies.

A second category of legal services which is constantly being performed for the Public Utilities Commission and its departments is the preparation, drafting and review of numerous types of legal instruments, including contracts, leases, deeds, permits, ordinances, resolutions, and applications to the federal and state governments for various purposes. In connection with this work, there is a regular system of review of insurance policies, bonds and other documents, which are prepared by others in compliance with requirements of the City and County of San Francisco.

The third category of legal assistance is that of constant close consultation with and advice to the Public Utilities Commission, by attendance at its meetings, to the Manager of Utilities, and to the heads and employees of the several operating departments under the Commission. It has been found that this policy of working closely together on the legal details of policy decisions is a strong preventative of legal difficulties in the future. It should be noted that as part of this process the Public Utilities Counsel and the deputies of this office have regularly attended legislative hearings, meetings of interest to the departments, numerous conferences, negotiations and staff meetings of a specialized nature.





With the exception of the Municipal Railway personal injury and property damage litigation, which is discussed under a separate category of this report, the various matters undertaken at the request of the Public Utilities Commission are discussed under the titles of its respective departments.

#### A. AIRPORT

In the litigation pending between the City and County of San Francisco and Western Air Lines, Inc., regarding Western's contention that between 1951 and the present there existed unjust discrimination in Airport rates and charges for common use facilities, the following developments took place:

In the federal court action which had been brought by Western Air Lines against the City and County of San Francisco for the period after 1957, negotiations led to settlement of said action on terms most favorable to the City and County of San Francisco. Western agreed to pay the full amount of rates and charges for which it had been billed and paid such sum unconditionally to the City and County of San Francisco, as part of a settlement in which it entered a long term agreement similar to that of other airlines, by which it promised to pay current rates and charges. Western made a back payment of \$329,764.83 as a part of this settlement, together with the additional sum of \$15,767.75 representing interest on the unpaid charges.

In the action in the San Francisco Superior Court involving Western's claim against the City and County of San Francisco regarding alleged discriminatory rates and charges before 1957, the City and County had previously obtained judgment against Western in the Superior Court and Western had taken an appeal from said judgment. During the past year the transcript in this matter was settled, and Western Air Lines is now schedules to file its opening brief in the District Court of Appeal.

Other litigation pending involving the Airport consists of actions brought by the City and County to acquire additional land for Airport expansion. The Director of Property at the present time is negotiating the acquisition of the parcels in question.

A most important category of the work of the Public Utilities division is the participation in proceedings before the Civil Aeronautics Board and its examiners regarding the certification of airline routes, in line with the policy of the Public Utilities Commission to secure adequate air service to meet the vastly expanding needs of this area. In the past year this office acted as counsel for the City and County of San Francisco in the following proceedings, including related court proceedings:



### San Francisco-New York Nonstop Case

This proceeding grew out of the motion which had previously been filed by the American Airlines to gain an expedited hearing regarding application by it for the right to conduct nonstop passenger service between San Francisco and New York and to become the third carrier engaged in such service. This office participated by seeking an immediate hearing on the issue of nonstop service. On September 2, 1959 the Civil Aeronautics Board granted American Airlines a nonstop certificate between San Francisco and New York. Subsequently Trans World Airlines and United Airlines filed petitions for reconsideration of the order, San Francisco answered such petitions, and they were subsequently denied.

Trans World Airlines and United Airlines then filed petitions for review with the United States Court of Appeals for the District of Columbia, which were also answered by San Francisco. The Civil Aeronautics Board, after further oral argument on the question as to whether its rules of practice had been violated by representations made to the Board and after oral argument on this question, denied the petitions for reconsideration of United and Trans World.

Subsequently in a court review of the order of the Board, on behalf of the City and County of San Francisco, I participated in a pre-hearing conference, filed briefs and made oral argument before the United States Court of Appeals. On May 19, 1960, the United States Court of Appeals issued an opinion whereby it returned the proceeding to the Civil Aeronautics Board for the Board to determine whether its rules of practice were violated in the issuance of the certification to American Airlines, and pursuant to this order the Board reopened proceedings by issuance of notice of a remanded hearing, which was scheduled to start on July 6, 1960, in Washington, D.C. It should be noted that the City and County of San Francisco through this office has been a full participant in all of the proceedings described and has prepared briefs, exhibits, interviewed witnesses, and prepared and presented testimony both in connection with administrative and court proceedings.

### Southern Transcontinental Service Case

The Civil Aeronautics Board in the above case will determine the question of transcontinental service across the entire southern part of the United States. San Francisco has been a full participant in this proceeding in order to obtain unrestricted competitive service to Dallas/Ft. Worth, San Antonio, Houston, New Orleans, Atlanta and Miami. Hearings in this matter consumed over two and a half months and approximately 100 parties participated. After its participation in the hearing the City and County of San Francisco filed its briefs with the Examiner and he has issued an





initial decision and recommendation to the Civil Aeronautics Board recommending two routes to Miami, one through Houston and the other through Dallas/Ft. Worth. The recommended decision would result in service on the routes in question by National Airlines and Delta Airlines. This office is now preparing exceptions to certain parts of the Examiner's decision.

#### Trans-Pacific Route Case

This case was filed pursuant to the direction of the President of the United States and involves air service throughout the entire Pacific area. Under contemplation are the establishment of air routes from both the East and West Coasts of the United States over the Great Circle Route and the Central Pacific Route to the Orient, Australasia, and between the Mainland and Hawaii. Participating in the proceedings are eight major carriers and every important major air center on the East Coast, the Midwest and the Pacific Coast. Hearings in this matter were held over a period of three and one-half months and the City and County of San Francisco has filed its briefs with the Examiner advocating a competitive service over the Great Circle Route to Tokyo and beyond; competitive service over the Central Pacific Route (if economically feasible) to Tokyo and beyond; additional service to Hawaii (if economically feasible); service to the South Pacific via Tahiti; and the establishment of an all-cargo service throughout the Pacific area (if feasible). The matter has now been set for argument before the Civil Aeronautics Board.

#### Pacific Southwest Local Service Case

In this proceeding San Francisco is seeking a determination of the need for further service between San Francisco, and Las Vegas and San Diego. In this proceeding certain trunk line and local carriers seek additional routes or extended authority in the area concerned. In the past year this office filed briefs in this matter and represented the City and County in hearings over a two-month period. The matter has now been submitted to the Examiner for decision.

#### Detroit Nonstop Exemption Case

In this proceeding San Francisco filed an answer in support of the City of Detroit which is seeking removal of restrictions on United Airlines, Trans World Airlines and American Airlines so as to allow unrestricted competition for the three carriers between San Francisco and Detroit. In this matter the Civil Aeronautics Board has instituted an investigation and assigned the matter for future public hearing.



In the past year this office prepared numerous legal documents for the Airport. Included were an amendment of TWA Plot 3 lease, preparation of leases for a service station, for Air Cargo Buildings 2 and 3, for space for the installation of baggage handling equipment by United Airlines, for quarters for Airborne Freight, and also for an additional plot for American Airlines, for the Post Office, and for certain ticket counter space, which latter leases are still pending.

Numerous contracts were also negotiated and prepared, including a revised contract with an airport consulting service, a contract with the Sound Abatement Center regarding its study of the problem of noise at the Airport, renewals of contracts with the several U-Drive services operating at the Airport, a new contract for public locker service at the Airport, and an Airport advertising service agreement.

In addition to the above, numerous space permits, surety bonds and tenants' insurance policies, resolutions and ordinances were prepared or were reviewed.

Important legal work other than litigation took place in connection with the Airport. Thus there was a satisfactory completion of the negotiations with Trans World Airlines, whereby the Plot 3 lease of that airline was amended so as to require payment by that airline of current rates and charges beginning as of 1957 and including a schedule of back payments whereby the current rates and charges will be paid beginning with that date. This agreement with Trans World Airlines, coupled with the agreement obtained upon compromise of the federal court litigation pending with Western Airlines, is of particular significance. As a result of these two agreements all air carriers, beginning as of July 1, 1957, will have made payments which, by agreement, will be based on the current rates of schedules and charges. These agreements terminate the long legal controversy which arose by reason of the incorporation of certain fixed rates and charges in the United Airlines leases of 1940 and 1947 and the Trans World Airlines lease of 1942. The successful conclusion of this legal controversy means that since July 1, 1957 and for the future, a system has been provided whereby rates and charges fixed by the Public Utilities Commission at San Francisco International Airport may be applied to all carriers.

The advent of the jet age in commercial transportation at the Airport in 1957 produced new legal problems. It was asserted by certain residents of communities surrounding the Airport that the operation of certain commercial jet aircraft produced excessive noise and other effects upon their property. This office has undertaken an exhaustive and continuing review of legal authorities bearing upon this problem and has participated in conferences with





San Francisco officials and others in order to advise on the continuing efforts to find a solution for this problem. A congressional hearing on this problem at San Francisco International Airport was attended in company with other City officials.

Other legal work undertaken for the Airport included the following:

Determination of the applicability of certain municipal zoning regulations to Airport property and the preparation of a proper submission of materials to the municipality concerned consistent with the legal determination of this office as to the limited applicability of such municipal regulations;

Rendition of an opinion regarding the legality of the contract of the City and County of San Francisco with the Sound Abatement Center, a non-profit corporation set up for the study of the noise problem at the Airport;

Rendition of an opinion regarding the approval required for modification of a TWA lease in cancellation of its 1942 lease;

Successful conclusion of negotiations whereby illegal use of the name "San Francisco International Airport" by a private organization has been terminated by mutual consent;

Research on regulations pertaining to heliport operations;

Appearance before the State Lands Commission in connection with a lease of filled material on San Bruno Shoals; and

Representation of the City in the matter of a complaint brought by the Safety Division of the State Industrial Accident Commission in regard to certain aspects of the aircraft landing guidance system.



B. HETCH HETCHY WATER SUPPLY, POWER  
AND UTILITIES ENGINEERING BUREAU

In the course of the past year certain matters which have been pending regarding asserted damage arising from Hetch Hetchy construction operations were prepared for trial and one of said matters was settled on terms favorable to the City.

In the field of administrative adjudication, several administrative proceedings involved the Hetch Hetchy Department. Last year, for the tax year 1959-1960, Tuolumne County sought to impose an assessment in the amount of \$2,338,400 on property including water rights owned by the City and County of San Francisco in Tuolumne County in connection with its operation of the Hetch Hetchy Project. The City and County of San Francisco sought a review of this assessment before the State Board of Equalization. Extensive materials were reviewed, witnesses and exhibits prepared, and a presentation of San Francisco's case was made to the State Board of Equalization. In the course of said presentation the City and County of San Francisco and Tuolumne County agreed on a compromise assessment of \$500,000 for the tax year in question. The Tuolumne County assessment was then reduced to said figure by the Board of Equalization.

In the current year, Tuolumne County has sought to impose an assessment of \$6,000,000 on Hetch Hetchy property, again including water rights. This office has again prepared materials, collected exhibits and interviewed witnesses in preparation for the conduct of another hearing before the Board of Equalization for the reduction of said assessment. The said hearing is now scheduled for September 16, 1960.

Another important matter which is now pending on behalf of the above department is an administrative proceeding before the Bureau of Land Management of the Department of the Interior to review the fixing of the amount of water required by the federal government to be released for the preservation of fish life and other recreational purposes between O'Shaughnessy Dam and Early Intake on the Tuolumne River, preparatory to the construction of Canyon Power Plant. This office has prepared a petition and brief and has held extensive conferences in connection with the presentation of this matter.

In connection with the operations of the Power and Utilities Engineering Bureau, this office prepared certain contracts in the course of the past year, namely a contract for the performance of test boring services preparatory to construction at the San Francisco International Airport, a contract for a traffic survey at the Airport. Other contracts, licenses and permits were prepared or reviewed. Advice was given on numerous other contract problems and matters relating to operation of Hetch Hetchy properties.





Advice was also given to this department regarding such matters as water rights, licenses, and overtime pay for employees. It should be pointed out that constant review of pending state and federal legislation affecting water rights is a continuing service which this office provides both to the above department and to the Water Department, to the end that every precaution be taken to preserve and protect the water rights of the City and County of San Francisco.

#### C. BUREAU OF LIGHT, HEAT AND POWER

An action was brought by a contractor for money allegedly wrongfully withheld in regard to the maintenance and repair of City-owned street lights. This matter has been prepared and now awaits trial. Also numerous claims were submitted to and reviewed by this office involving the Bureau. Contracts and other documents were also reviewed in connection with bureau operations.

#### D. WATER DEPARTMENT

In the course of the past year a large segment of litigation involving this Department was prepared for trial and on the recommendation of the Department was compromised on terms favorable to the City and County of San Francisco. This litigation arose from the breaking of a 24-inch cast iron main of the Department at 7th and Howard Streets on July 4, 1957, which inundated the surrounding area and caused extensive property damage. As a result 33 claims were filed against the City and County. Twelve of these resulted in litigation. The total of claims and prayers came to \$350,000. The prayers of the complaints named the City and County of San Francisco and the Western Union Telegraph Company as co-defendants. The City and County also filed a cross-complaint against Western Union alleging that it had negligently constructed a concrete vault upon the City's water main. In these 12 matters there were extensive pleadings, depositions, discovery proceedings, conferences, and the retention of and consultation with expert engineering and accounting witnesses, in addition to members of the Department. As a result of extensive negotiations with Western Union and the various plaintiffs, all litigation with the exception of one lawsuit, was settled on payment to the plaintiffs of \$115,934.80, one-half of which sum was paid by the City and County of San Francisco and one-half by Western Union. Hence the City and County disposed of all such claims on payment by it of the sum of \$57,967.40, with the exception of one remaining lawsuit for \$3,000.

Another group of lawsuits of fundamental importance are those cases involving contracts of the Spring Valley Water Company for the furnishing of water at fixed rates and charges



which the City and County of San Francisco is now challenging as superseded by the power of the Public Utilities Commission to fix such rates and charges as a municipal public utility rate-fixing body. Ten such cases are now pending. In the course of the past year extensive research and conferences have taken place in regard to the subject matter of these cases and one of the more important proceedings, that against the California Water Service Company and the Town of Hillsborough, has been briefed and a date set for trial of the matter.

Another important class of litigation is the prosecution and defense of eminent domain actions involving land acquisitions for the Water Department and acquisitions of rights in Water Department land by other entities. These actions take place in the several counties in which such lands are situated. Thus San Francisco obtained rights of way in South San Francisco and in Hillsborough on settlement with land owners in two land acquisition actions by it. Three new eminent domain actions were filed for the acquisition of watershed property in connection with Crystal Springs Reservoir. One such action involved a quarry property which the City had appraised at \$69,000 but for which the owner demanded \$188,000. This matter went to trial and in the course of trial the property owner accepted the City's offer to pay \$70,000 for the acquisition of the property in question. A number of eminent domain actions were in progress during the past year which had either been brought by or against the City and County of San Francisco regarding the Water Department.

Another group of actions which were compromised during the past year were 58 Municipal Court lawsuits brought by the City and County of San Francisco against a contractor, with prayers totalling \$9,652.88. These actions were settled on the payment by the contractor to the City of the sum of \$6,081.31 as the cost of damages caused to water mains in the performance of street improvement contracts. Another case involving the San Francisco Water Department is a pending action brought by the City and County of San Francisco for damage to the San Andreas 54-inch pipeline by reason of the deposit of silt over the pipeline due to the alleged negligence of a land developer. Legal proceedings were taken including discovery to prepare this matter for trial.

Another administrative matter conducted by this office in the past year was a two-day hearing before the State Water Rights Board regarding an application of the City and County to appropriate water from San Antonio Creek in Alameda County preliminary to the construction of a proposed dam by the Water Department. The application was protested by the Alameda County Water District.

A great variety of legal instruments were prepared for





the San Francisco Water Department in the course of the past year. One of the most important was the preparation of a form of water user's contract for municipal agencies. This form of contract has been designed to set forth the terms and conditions under which the Water Department supplies water for resale to governmental agencies in San Mateo, Santa Clara and Alameda Counties. Numerous conferences were held, research conducted and negotiations participated in before a form of contract mutually agreeable to San Francisco and to the agencies involved was formulated. Negotiation of this contract also involved attendance at numerous meetings of the recently formed Bay Area Water Users Association, an association of such water users which has approved the form of the contracts in question. The work of this association has been carefully reviewed by this office in conjunction with representatives of the Water Department.

A large number of leases and other legal documents were prepared for the Water Department. These included leases for the Agricultural and Land Division. Thus, leases of Water Department land were prepared for such varying purposes as for use as a nursery, for a trailer court, for berry farms, for a restaurant and for grazing and share-cropping purposes. Each such lease was negotiated and drawn with special provisions needed to protect the City in relation to the particular activity in question. In addition, certain other documents involving such matters as lease modifications, assignments, and covenants for deeds were prepared.

In the past year, there was a complete review of legal procedures and a drafting of all necessary documents in connection with the sale of the Silva Tract located in Millbrae, which was conducted by public bidding by the Director of Property. A number of conferences were held in order to effectuate needed reservations to protect the City and County's right to operate and maintain its pipelines in the tract area.

Another major undertaking which is underway is the proposed development of an industrial park on approximately 600 acres of Water Department property near Pleasanton. A representative of the City Attorney's Office has participated along with Water Department representatives on a working committee which is also composed of representatives of the City of Pleasanton. This committee has prepared the drafts of the legal documents needed to effectuate the creation of the industrial park on a cooperative basis between the City and County and Pleasanton.

A proposed solution of certain problems affecting the water supply of the City of Pleasanton has also been worked out after considerable negotiation respecting terms and conditions of sale, and an ordinance to effectuate a transfer of certain Water Department properties was prepared for presentation to the San Francisco Board of Supervisors for submission to the voters.



Certain other contracts are also either prepared or reviewed along with numerous licenses, permits, bonds, insurance policies, and other documents.

As already noted, a large share of the work involving the Water Department is that of participating in conferences and the rendition of continuing legal advice, particularly respecting both water rights and the terms and conditions for the sale of water. It should be noted that in the course of the past year revised rates and charges, and rules and regulations for water service to customers were thoroughly reviewed by this office before their enactment by the Public Utilities Commission.

As mentioned in the case of Hetch Hetchy, legislative matters were also carefully followed, with analysis of water rights legislation and attendance at numerous legislative hearings including all relevant hearings of the State Senate and Assembly committees dealing with water problems. A subject of study and legal analysis has been the State Water Plan and its consequences, particularly in relation to the effect it would have on San Franciscans as taxpayers and as a supplier of water to other communities. Numerous conferences have been held among City and County officials as well as with State officials in regard to the protection of the interests of the City and County of San Francisco under the proposed project.

In this connection, an opinion was rendered by this office concerning the effect of a proposed concurrent resolution interpreting the State Water Plan Act in relation to the rights of the City and County. Other opinions were also rendered by this office on water problems.

#### E. MUNICIPAL RAILWAY

The main item of litigation (outside of actions for personal injury and property damage which are covered elsewhere in the report) was the proceeding in mandate of Blum vs. City and County of San Francisco. This action had been brought by taxpayers who sought restoration of cable car service on Washington and Jackson Streets and who claimed that the former Washington-Jackson cable car line had been abandoned illegally and that service should be restored thereon. An additional defendant was the contractor who pursuant to contract with the Public Works Department had removed the unused cable car tracks on Jackson and Steiner Streets. This contractor sought recovery of the amount due and owing under his contract, payment of which was withheld by reason of the pendency of litigation.

In the prior year, after most extensive preliminary proceedings, the trial was conducted over a ten-week period and an Interlocutory Judgment rendered requiring further proceedings before the Public Utilities Commission and the Board of Supervisors regarding the abandonment of service on the line in question. Said





proceedings were conducted and a further hearing was held before the Superior Court which resulted in a final judgment in favor of the City and County as against the contention of the plaintiffs that cable car service had been illegally removed. The Court held that by reason of the additional proceedings before the Board of Supervisors and the Public Utilities Commission there had been a proper termination of cable car service and that the tracks had been removed legally by the contractor. The contractor was awarded recovery of the contract price for work performed but was denied the recovery of interest on said sum. The contractor has now appealed from that portion of the judgment which denies recovery of interest and said appeal is now pending. By reason of the granting of the Interlocutory Judgment in Mandate the Superior Court awarded counsel fees to the attorneys for the taxpayers in the sum of \$20,000.00. This proceeding required the preparation of extensive briefs, findings and other documents in the Superior Court. By reason of the judgment in this matter, all phases of the cable car consolidation plan which is now in effect have been upheld legally.

Other litigation undertaken for the Municipal Railway included the defense of a nuisance case involving the claim that a bus terminal in front of a residence created an actionable nuisance damaging the property in question. After briefing of this matter, on the first day of the trial the Superior Court granted judgment on the pleadings to the City and County.

In regard to the preparation of legal documents this office prepared contracts and reviewed insurance policies, bonds and other instruments on behalf of the railway. Thus, negotiations were conducted and drafts of modifications prepared in regard to a diesel coach lease and a school bus transportation contract. In addition, a recission of a contract for power house reconstruction was drafted, and the said contract was rescinded accordingly.

Continuing legal advice was also furnished to the Municipal Railway regarding various matters and during the course of the past year, formal opinions were rendered regarding several Municipal Railway problems.

#### F. PUBLIC UTILITIES COMMISSION

The Public Utilities counsel regularly attends meetings of the Public Utilities Commission in order to render advice on current problems to the members of the Commission. This office either prepares or reviews the Public Utilities Commission resolutions. It should be pointed out that besides the formal opinions which have been referred to in this report, many opinions by way of letter are rendered for the guidance of the Commission, the Manager of Utilities and the heads of the utility departments.

Another regular service which is performed by this office is assistance on the legal aspects of employee dismissal proceedings which are conducted by the Manager of Utilities. A representative from the Public Utilities Commission regularly attends such hearings in order to advise on legal questions.



## RATE DEPARTMENT

The Rate Department's function within the City Attorney's office is to advise the City Attorney on all utility matters affecting the City and County of San Francisco and its residents, as well as any other matters of a utility nature that in any way, directly or indirectly, affect the City. Consultation and advice is also given to other departments. This has included coordinating work with the City's Public Utilities Commission regarding assessed valuation relating to utility properties. Considerable time was also devoted to the Redevelopment Agency in connection with the Diamond Heights Project.

Of major consequence during the fiscal year was the decision by the California Public Utilities Commission in connection with Case No. 6148. This was an investigation on the Commission's own motion to determine the question of whether the tax savings gained by the selection of alternate methods of depreciation accounting contained in Section 167 and 168 of the Internal Revenue Code should be retained by the utilities for plant expansion as cost-free capital, or some portion thereof, or returned to the consumer in the form of lower rates. Many cities, including San Francisco, joined with the Attorney General's office in requesting that any benefits accrue to the consumer rather than to the stockholders. To San Francisco residents, the tax saving on their gas and electric bills alone would have amounted to approximately \$3,000,000 last year.

On April 12, 1960, the California Public Utilities Commission issued its decision with respect to Section 167 of the Internal Revenue Code. The decision, in effect, stated that those companies who avail themselves of liberalized depreciation will flow through the savings to the consumer. The Commission left the prerogative of whether to use Section 167 of the Internal Revenue Code up to the management of the utility.

Of those utilities that serve customers in San Francisco, only the Pacific Gas and Electric Company has taken advantage of liberalized depreciation. Whether they will continue to do so in the light of the Commission's decision in Case No. 6148 depends upon studies now being conducted by the Company

Section 168, pertaining to accelerated amortization, was not discussed in the decision since this provision is no longer available and the five-year provision will soon expire.

This office, together with the communities of Los Angeles, San Diego, Santa Ana and Whittier, joined in petitioning the Supreme Court of the State of California for permission





to file a brief amicus curiae in Richfield Oil Corporation v. Public Utilities Commission of the State of California, et al., and Southern California Edison Company v. Public Utilities Commission of the State of California, et al., S. F. Nos. 20302, 20303, 20311 and 20313. The petitioners asked that the gas operations of Richfield, as they pertain to the construction of a pipeline and sale of natural gas to Southern California Edison Company, be declared a public utility, and be required under Section 1001 of the Public Utilities Code to secure a certificate of public convenience and necessity.

By supplying large quantities of gas to individual companies not only is the supply to small residential and commercial firm customers lost, but it places the natural gas utilities at a disadvantage in their overall operations of supplying natural gas to all of their customers in their certificated areas. The Court, however, decided in favor of Richfield and annulled the orders of the California Commission.

The City Attorney's office during the past year participated in 12 formal cases before regulatory agencies. More detail on these cases will be given below under the appropriate headings.

#### A. ELECTRIC

No applications have been made to increase electric rates to consumers in San Francisco during the fiscal year. The average electric bill in San Francisco for the calendar year 1959 amounted to approximately \$4.52, for an average consumption of 147 kilowatt hours of electricity. This compares with \$4.46 per month, with a corresponding average consumption of 143 kilowatt hours, for the preceding year.

It is to be noted that this year the Pacific Gas and Electric Company completed negotiations for the construction of a geothermal plant with a capacity of 12,500 kilowatts. The Company also generates electricity by hydroelectric and steam electric plants. In 1962, the Company will construct a new steam plant in Eureka and use atomic fuel in lieu of the natural gas and fuel oil that it is now using in its steam plants.

As a part of financing the overall construction of its gas and electric properties, the Pacific Gas and Electric Company marketed \$60,000,000 in Series "EE" bonds last September, which bonds carried an effective interest of 5.08%. The coupon rate for these bonds is 5%. This is the highest cost for bond money the Company has experienced during its entire history. Since one of the factors taken into account in determining the fair and reasonable rate of return for utilities under the California Commission's jurisdiction is the cost of their senior securities, this higher return is reflected in the rate structure



of the company. As of June 30, 1960, the market appeared to have eased somewhat, as a result, the cost of bond money has been on a downward trend in the latter part of the fiscal year.

## B. GAS

The City participated in 5 major gas cases this past fiscal year, as follows:

In Application No. 40926, the Pacific Gas and Electric Company requested an increase in gas rates to offset increased costs of El Paso gas to the Company. This increase in revenue amounted to approximately \$13,000,000, of which 83% was assigned to firm customers, and 17% to interruptible customers. The City took the position that a greater part of the increase should have been assigned to the interruptible customers.

In conjunction with the current application for increased natural gas rates and certificates of public convenience and necessity for the construction of new natural gas pipelines, the California Commission held 8-1/2 days of hearings in connection with Case No. 5924, regarding the adequacy of the natural gas supply and service within California. This case was instituted on the Commission's own motion in 1957. The Commission's staff introduced evidence in this proceeding to show the current and future estimated energy requirements for natural gas for the State of California.

This investigation was closely tied in with two major applications that were initiated this year by gas companies both in Northern and Southern California, for the construction of two important pipelines. One line, known as the Rock Springs line, will transport gas from the Rocky Mountain region to Southern Counties and to Southern California gas companies; the other pipeline is that proposed by Pacific Gas and Electric Company to import Canadian gas through subsidiary companies to the California border where Pacific Gas and Electric Company will complete the line to its load center in Antioch.

In Application No. 40738, the Pacific Gas and Electric Company asked the California Public Utilities Commission for a certificate for the California portion of this transmission line. That portion of the line from the Canadian Border to the California border is being constructed by a subsidiary company known as Pacific Gas Transmission Company, and the certificate of public convenience and necessity was requested from the Federal Power Commission in Docket No. G-17350, et al. Certificates to export the gas from Canada were applied for and were obtained from the Canadian National Energy Board. The construction of this line now awaits the formal approval of the Federal Power Commission and California Public Utilities Commission.





If approval is forthcoming in the immediate future, the Pacific Gas and Electric Company contemplates the completion of this line in the 1961-62 heating season.

In the proceedings before both the Federal Power Commission and the California Public Utilities Commission, the City requested that the certificates be approved. With the rapid growth of California, it is to the City's best interests as well as all other consumers in California that sufficient supplies of natural gas be available for both domestic and industrial growth.

The Pacific Gas and Electric Company also sought, and was granted, approval to operate an underground storage field in McDonald Island. When in full use, this project will allow the Company to store sufficient gas to supply an average maximum daily amount of 400 million cubic feet of gas. A sizable pipeline would be required to supply a capacity of that magnitude. Gas will be pumped in the field during the summer months when an excess of supply over demand exists, and will allow the Company to draw upon this gas to meet its peak demand in the winter months.

On May 6, 1960, the Pacific Gas and Electric Company filed Application No. 42225, requesting a general increase in all of its natural gas rates. The last general increase in natural gas rates was approved by the California Commission in July, 1958. In its current application, the Company is requesting a \$26,615,000 increase in rates, which will produce a rate of return of 6.8%. Of this amount \$9,700,000 is due to an increase in the price of natural gas the Company purchases from El Paso Natural Gas Company. The Company also requested that interim rates be authorized to offset the increased El Paso costs beginning August 25, 1960. Four days of hearings were held and the matter was submitted to the Commission on July 8, 1960, on this portion of the general increase. The overall increase represented by the application will amount to approximately \$1.04 per month to the average household in San Francisco. The present average monthly domestic bill amounts to \$4.82 for 6713 cubic feet of gas per month; if the full increase requested by Pacific Gas and Electric Company is placed into effect, the bill would increase to \$5.86. This represents a 21% increase. For the previous year, the average monthly domestic bill amounted to \$4.67 for 6898 cubic feet of gas per month.

### C. TELEPHONE

The Pacific Telephone and Telegraph Company continued to expand its facilities to serve the increased growth in population, business and industry. As part of the expansion program, the Pacific Company sold 10,045,630 shares of common stock and \$72,000,000 of debentures with an interest rate of 5.09%. The number of new telephone installed in the City and County of San



Francisco for the calendar year 1959 was 12,200 representing a gain of 4115 over the previous year.

This year has also seen a marked increase in the Pacific Company's earnings over previous periods. Toll revenue accounted for the greatest gain over the last year. The last general rate increase for the Company's intrastate operations was granted in 1958.

#### D. TRANSPORTATION

An analysis of the major cab companies was undertaken with the Controller's office to determine operating ratios and rates of return on investment. Even with the increases granted in the fall of 1958, the earnings of the major companies were low. This was, in part, caused by the fact that operating costs in San Francisco are among the highest in the nation.

This past year experienced a reduction of two more commute trains between San Francisco and San Jose. Southern Pacific Trains Nos. 155 and 156 were permitted by the Interstate Commerce Commission to be discontinued after being denied by the California Public Utilities Commission. Under the Transportation Act of 1958, railroads, in general, showing a loss on segments of their operations and denied discontinuance by state regulatory agencies may apply to the Interstate Commerce Commission for relief.

Two other pairs of trains operating between Los Angeles-Sacramento and Oakland-Sacramento were also permitted to be dropped.

Pacific Greyhound Lines, in Application No. 41617, applied for an increase in commuter fares to San Francisco and Contra Costa County. The requested increase was granted by the California Commission, and the effect on the Company's operations was to reduce its losses by increasing the commutation fares for the year 1960 by approximately \$66,200.

In Case No. 5432 - petitioners Nos. 159 and 160, an increase in certain of the minimum rates and charges in Minimum Rate Tarriff No. 2 was requested by the California Trucking Association, Incorporated. The increase in question was a surcharge to be added to all shipments originating or terminating in San Francisco coastal territory, comprising some 14 counties around the Bay Area. The surcharges were designed to offset wage increases granted in the new contract covering Bay Area truck drivers.

While no evidence was introduced as to the relative efficiency of dock handling compared with other areas in the state, the California Commission approved the surcharges for this area.





The Burlingame-San Mateo Transit Company requested a certificate of public convenience and necessity to operate a bus service from Palo Alto north to Candlestick Park on days when sporting events were scheduled. The Greyhound Corporation also applied for an extension of existing routes in San Francisco to operate special busses from neighboring counties to Candlestick Park. The City supported the additional bus service, since it was not in competition with the City's own Municipal Railway bus service to the Candlestick Park area.



LEGAL OPINIONS RENDERED  
TO CITY DEPARTMENTS

Pursuant to the provisions of Section 26 of the Charter, the City Attorney is required to "give his advice or opinion in writing to any officer, board or commission of the city and county when requested." A great deal of the work of the office goes into the research, drafting and checking of opinions requested by officers, board and commissions. The practice in my office is to assign the request, when received, to a deputy to write a preliminary draft, which is then checked by a senior deputy for authority and conclusion. The draft then comes to me personally and requires my approval before issuance. The opinion as finally released may appear as a relatively simple one since very few persons are aware of the large volume of notes that are compiled by the writer, reviewer and myself before the opinion is finalized. Many of these notes are not used in the actual writing of the opinion, but the field of law must be exhaustively researched before I can advise in writing an elected officer, a department head, board or commission to proceed to deal with the public or another political entity on the particular subject for which the opinion has been requested.

In the year covered by this report I have issued 86 opinions to various officers, boards and commissions of the city. These 86 opinions bring the cumulative total written by me since I became City Attorney on March 1, 1949, to 1,374. One would normally conclude that with the Charter in effect since January 8, 1932, and with my predecessor, John J. O'Toole, and myself writing several thousand opinions that there is very little in the Charter that has not been reviewed. However, our society is a changing one, and with each change, however slight, new problems arise, requiring an interpretation of the legislative intent embodied in legislation that governs the people of the City and County of San Francisco. These social changes, together with ever-increasing acts of the Legislature on local matters, continually confront officers of the City with new fields which must be explored and for which they seek my legal advice. In order to demonstrate in some way the variety of questions that have been propounded during this year, I am listing the departments and the number of opinions issued to each of them below:

Board of Supervisors	25
Civil Service Commission	8
Controller	7
Health Service System	7
City Planning Commission	5
Art Commission	3
M. H. de Young Memorial Museum	3
Department of Public Works	3
Recreation and Park Department	3
Chief Administrative Officer	2
Fire Department	2
Public Library	2
Police Department	2





Public Utilities Commission	2
Redevelopment Agency	2
Agricultural Commissioner	1
California Palace of the Legion of Honor	1
County Clerk	1
Board of Education	1
Municipal Railway	1
Parking Authority	1
Department of Public Welfare	1
Retirement System	1
Sheriff	1
Water Department	1

Copies of these formal opinions are mailed to various persons and groups throughout the City who have requested them. In addition, departments of the City seek my advice on matters not of general interest but dealing solely with an individual problem of a rather limited scope. In response to these requests I issue letters, which are forwarded only to the officer, board or commission seeking the advice.

#### CONTRACT PREPARATION AND APPROVAL

All contracts in which the City and County of San Francisco is a party must be approved by the City Attorney. Daily these contracts are presented to me for approval and I or a deputy review each before forwarding it to the Controller for certification of funds or returning it to the department with my approval thereon. These contracts embody all the bids that are awarded for capital improvements of San Francisco and for all personal services that are rendered to the City or a department of the City. At present, and for some time, negotiations have been going on by me to arrive at a final form of contract with the State of California relative to the reconstruction of the Palace of Fine Arts. The terms of this contract are complicated since they must fully satisfy the requirements of the State of California, which is appropriating \$2,000,000 for the rehabilitation of this building, as well as meet the Charter requirements, since bond money of the City is also being used. The payment of the cost of this project is augmented by the very generous gift of Walter Johnson in the amount of \$2,000,000.

This year, witness the withdrawal of the Stanford Medical School from the San Francisco General Hospital staff and the necessity of negotiating and preparing a contract with the University of California Medical School for many additional services. This contract is one of the first of its kind in this field and has made available medical services directly to the City which it did not heretofore receive.

Contracts for the Recreation and Park Department have been particularly plentiful this year, since many of its concession agreements were rewritten and additional contracts with the Zoological



Society were drafted to cover the new concessions which the Zoological Society has taken over in the Fleishhacker Playfield and Zoo.

## LEGISLATIVE DEPARTMENT

During the last twelve months I have drawn a large number of ordinances for the Board of Supervisors. At all times one of my deputies is in attendance at meetings of the Board of Supervisors and its committees and frequently is called upon to assist in the drafting or redrafting of legislation pending before the Board. However, the bulk of the work of drafting legislation is done in the office. Some of the more complicated legislation drawn by me this year covered zoning, when after ten years of hearings the Board of Supervisors adopted a comprehensive zoning ordinance which became effective May 2, 1960. An ordinance to require a seller to secure a report of the legality of any building change in his property, now commonly referred to as the "Innocent Buyer Ordinance," was drafted by me and further amended upon suggestion of the members of the Real Estate industry and the Board of Supervisors. These are but two examples of the type of legislation drawn by me, but they serve to illustrate the amount of time that is spent on this important function of the office.

The State Legislature met for a budget session this year and several matters of interest to San Francisco were placed on the agenda of the special session called by the Governor. A deputy from my office attended the session and reviewed and reported on all legislation pending that pertained to San Francisco. Based upon these reports, I made my recommendations to the State Legislation Committee for whatever action it deemed proper.





URBAN RENEWAL--ABATEMENT AND  
CONDEMNATION OF PUBLIC NUISANCES

The increasingly vigorous enforcement of the building laws of the City and County and of the State in recent years has resulted in a substantial increase in the condemnation orders filed by the Public Works Department and the Public Health Department. There has been a corresponding increase in the number of buildings rehabilitated or demolished as the Urban Renewal Program has gained momentum.

The vigorous enforcement program carried on by this office has created a greater willingness on the part of property owners to comply with administrative condemnation orders. During the past year a greater number of property owners complied with administrative condemnation orders without referral to this office. Further evidence of this increasing acceptance of the Urban Renewal Program is seen in the fact that in the cases referred to this office voluntary compliance was secured in approximately 47% more cases this year than in the previous year.

Despite this increase in voluntary compliance with condemnation orders issued by the Director of Public Works and the Director of Public Health there remained, as in previous years, a large number of hard core cases which had to be referred to the City Attorney for legal action.

It should be noted that these hard core abatement cases are among the most difficult, time-consuming and vexatious matters referred to the City Attorney. Owners frequently engage in legal filibusters and delaying tactics dragging litigation out over many months. A contested abatement case may well require more time than a fifty-thousand dollar damage suit. Even uncontested abatement cases frequently are delayed by the necessity of concluding probate proceedings, appointment of guardians, foreclosure proceedings, change of ownership, quiet title proceedings, etc., before compliance can be secured. Attempt is made in each case to pursue a course of action which will result in the successful termination of the case in a minimum time and at a minimum expense to the City.

The Charter of the City and County of San Francisco provides that only the Board of Supervisors may authorize the dismissal of litigation filed by the City. After rehabilitation or demolition is secured in an abatement case, the case cannot be dismissed or terminated except upon formal authorization by ordinance passed by the Board of Supervisors.

Current procedure requires that an ordinance be drafted authorizing dismissal of the abatement case. This ordinance must be signed by the Director of Public Works, the Director of Public Health and the Chief Administrative Officer. The ordinance must



then be calendared for hearing and approval by Committee, go through two successive hearings by the Board of Supervisors, be signed by the Mayor, and published twice before the City Attorney is authorized to dismiss or terminate an abatement case. This required termination procedure alone sometimes requires two or three months.

The City would save time and money if the City Attorney were authorized to dismiss abatement litigation upon certification by the complaining department that the conditions complained of have been corrected. Consideration is being given to a Charter Amendment which could permit a simplified termination procedure in abatement cases.

During the past year the Department of Public Works and the Department of Public Health referred 75 abatement cases to the City Attorney for legal action. During this same period 76 abatement cases were successfully terminated by this office. In 42 of these cases--an increase of 47% over the previous year--compliance was secured by negotiation with the owner or his attorney. These cases were terminated in a minimum time and at a minimum expense to the City. In 34 cases--an increase of 100% over the previous year--compliance was secured only after a superior court action had been filed against the owner. In total, the 76 abatement cases terminated exceeded the referrals during the year, and represent an increase of 65% in cases terminated over the previous year. The vigorous enforcement program carried on by this office has contributed to the increasing effectiveness of the Urban Renewal Program.

The tabulation on the next page shows the number of abatement matters that were successfully terminated by the office of the City Attorney during the past fiscal year, whether such terminations were litigated or nonlitigated, the method of compliance, the number of referrals from the various departments, the number of actions filed during the year, the number of cases pending as of the close of the fiscal year and whether litigated or nonlitigated.

#### PARKING AUTHORITY

The strong opposition to the development of the Portsmouth Square Underground Parking Facility resulted in a marked increase in the work load of this office during the fiscal year 1959-1960 for services rendered to the Parking Authority.

In addition to the preparation of the legal documents for the construction, leasing and operation of the proposed garage beneath Portsmouth Square, the active resistance to the use of historic Portsmouth Square for this purpose has required this office to render three written opinions and to engage in lengthy litigation, which at this writing is now in the appellate stage before the District Court of Appeal.





# ABATEMENT MATTERS

July 1, 1959 - June 30, 1960

Department	Referrals during fiscal year	Actions filed in fiscal year	Cases Terminated in Fiscal Year			Method of Compliance			Cases Pending 6-30-60		
			Number	Liti-gated	Non-liti-gated	Demo-lition	Rehab-ilita-tion	Other	Number	Liti-gated	Non-liti-gated
Public Works	66	22	59	26	33	33	25	1	135	65	70
Public Health	<u>9</u>	<u>6</u>	<u>17</u>	<u>8</u>	<u>9</u>	<u>6</u>	<u>7</u>	<u>4</u>	<u>37</u>	<u>22</u>	<u>15</u>
Total	75	28	76	34	42	39	32	5	172	87	85



In the case of Best v. City and of San Francisco, a taxpayer sought an injunction and a writ of mandate to prevent the execution of the agreement between the City and the City of San Francisco Portsmouth Plaza Parking Corporation, a nonprofit corporation, for the construction of a garage beneath Portsmouth Square. After five days of trial the Superior Court rendered a decision in favor of the City upholding the legality of the project. The plaintiff has taken an appeal from the judgment and presently the matter is pending before the District Court of Appeal, the matter having been submitted after oral argument on July 12, 1960.

Prior to the approval of the legal documents by the Board of Supervisors three written opinions were rendered:

- (1) To the Art Commission, advising that Portsmouth Square is not a work of art as that term is defined in section 46 of the Charter;
- (2) To the Board of Supervisors, advising that the proposed plans for the construction of the garage do not violate the provisions of section 42 of the Charter; and
- (3) To the Board of Supervisors, advising that with respect to the acceptance of the bid for the operating lease the conditions imposed by New York Life Insurance requiring the assignment of the lease were reasonable and valid.

In connection with the Sutter-Stockton Garage project the complaint to quiet title, City and County of San Francisco v. All Persons, under provisions of the McEnerney Act, so-called, (noted in the previous report) was successfully concluded with a decree being rendered in favor of the City.

Prior to the opening of the New Civic Center Garage a resolution was drafted for the Board of Supervisors establishing rates and charges for parking.

Preliminary to the development and financing of the neighborhood district parking program this office rendered a written opinion to the Parking Authority advising that the City can legally sell revenue bonds under existing law.

During the year, seventeen regular and special meetings of the Parking Authority were attended by one of my deputies as well as numerous conferences in connection with various projects, including the proposed Japanese Cultural Center Garage.





## REDEVELOPMENT AGENCY

The legal problems of the Redevelopment Agency have increased to such an extent that in addition to the four attorneys assigned to handle the workload of the Agency it has been necessary that other deputies in the office assist in some of the work. In addition a considerable portion of my time has been devoted to the many complicated problems of the Redevelopment Agency.

Because of the heavy workload, and at the request of the Agency, I assigned Morley Goldberg, my deputy in charge of redevelopment matters, to quarters in the Agency office to take care of the immediate legal problems confronting the Agency. In addition, Mr. Goldberg was assigned as a representative to sit in with other City departments and Agency staff in their review of the proposals submitted by developers in connection with Redevelopment Area E-1.

In connection with Redevelopment Area E-1, a condemnation action was filed against 142 properties in the area. By agreement with the Agency certain cases were selected for early trial, motions to advance were made, and other steps necessary were taken to get these cases at issue. The first of these cases are set for trial for early September.

In my last annual report I reported that a suit was filed in Redevelopment Area E-1, Gold v. Redevelopment Agency of the City and County of San Francisco and the City and County of San Francisco, requesting that the court issue a writ of mandate to compel the Agency to purchase the property of the petitioner and asked for damages in the sum of \$217,000 against the Agency and the City because the property owner had been unable to rent the property since the area had been designated for redevelopment. In answer to the petition we filed a demurrer and motioned to strike on the grounds that no cause of action could be legally stated. At the time of the report the matter was pending before the court and had not been heard. Each time the matter had been scheduled for hearing the petitioner requested a continuance, and finally at our insistence the petitioner filed a dismissal of the action.

During the past year all pending actions in the Diamond Heights condemnation suits were either tried or settled, and land acquisition was finally completed in this Project.

Inasmuch as titles to property in this area were complicated and many owners did not have clear title to the property, the Agency had acquired many properties subject to clearing the title. We have prepared and filed a number of quiet title and McEnerney actions, some of which are now pending, in order to clear the title to these properties.

Recently a contract was drafted between the Agency and the Pacific Gas and Electric Company and the Pacific Telephone and Telegraph Company for the installation of underground utilities in the



Diamond Heights Project. In order that there be no conflict with the position taken by the City in its litigation with the Telephone Company, it was necessary that one of my regular deputies and our rate expert attend all meetings with Mr. Goldberg and the representatives of the Agency and the utilities companies during the negotiations and drafting of the agreement. It was necessary for me to devote a considerable period of time in reviewing the documents before a final draft was finally agreed upon.

Land acquisition in the Western Addition Project proceeded rapidly during the past year.

A considerable number of cases were tried, both in the acquisition of property for the Geary Expressway and the Project. All parcels necessary for the Geary Expressway were acquired and the necessary transfers of land between the Agency and the City, pursuant to the Joint Working Agreement between the Agency and City, were completed.

At this time there are approximately 12 parcels left in the Western Addition Project and cases involving these parcels are set for trial in August and September.

A considerable portion of the time of one of the deputies assigned to the Redevelopment Agency was devoted to the preparation of the many disposition documents to be used by the Agency in the disposition of land in redevelopment projects.

One of the more interesting trials of cases in the Western Addition involved the case of the Redevelopment Agency v. Manwell. This case involved property which was damaged by fire after the filing of the condemnation action.

Under California law the value of property in condemnation is determined as of the date the action is filed and summons issued if the case is tried within one year after such date. The fire in this case occurred after the filing of the action and before trial. One of the Agency experts testified that the property before the fire was worth \$55,000 and the other expert \$60,000. Experts for the property owner testified that the property was worth \$80,000, \$84,000 and \$84,500. Agency experts also testified that after the fire had occurred and considerable vandalism had taken place, the property was worth approximately \$30,000.

We attempted to have the valuation placed on the property in its damaged condition. However, the court interpreted the law literally and held that the value must be fixed as of the date the suit was filed and the summons issued, and ruled that the jury could not take into consideration the fire damage or the fact that the owner had collected fire insurance. On the basis of this ruling the jury brought in a verdict in the sum of \$60,000.





It is our present intention to appeal this case on the grounds that the court erred in its ruling and that the owner would be unjustly enriched on collecting the full value of the property and also fire insurance. Strangely enough, our research indicates that there are no cases in California on this subject of fire damage and we were only able to find one other case in the country of a similar nature.

Another interesting case was the case of Redevelopment Agency v. Sit Lee and Roy Lee. In this case, after the suit was filed, an answer was filed by a son of the defendant who claimed that the property had been deeded to him. However, the deed had never been recorded. On this basis the trial proceeded against the son and a default was entered against the parents. One of Agency experts testified that the property was worth \$11,000 and the other testified that the property was worth \$12,500. Experts for the defendant testified that the property was worth \$14,500, \$16,923 and \$18,000. This case was tried without a jury and the court found the property to be worth \$12,750. After judgment was entered, Mrs. Sit Lee, through her attorney, attempted to have her default set aside on the grounds that her son had no authority to bring this action and she was the real owner of the property. The motion to set aside the default was heard and the court denied the motion.

## FRANCHISE MATTERS

### Litigation - Pacific Telephone & Telegraph Company

As reported in the prior year, a favorable Superior Court judgment obtained by the City and County in the action for declaratory relief brought against it by the Pacific Telephone & Telegraph Company was reversed by the California Supreme Court, which held that the use of streets by telephone companies had become a matter of statewide concern and that said use was no longer a matter of municipal concern. Pursuant to this decision of the Supreme Court the matter was remanded to the Superior Court for a new trial.

Prior to the new trial the City and County amended its answer so as to raise several additional defenses as against the contention of the Telephone Company that it possessed a statewide franchise covering its operations within the City and County of San Francisco. Trial of this matter was held during a three week period in the present year after extensive research, gathering of evidence regarding the municipal nature of telephone operations, and legal briefing. On March 9, 1960, the Superior Court rendered a judgment in favor of Pacific Telephone wherein it declared that the Company possessed a state franchise for the construction and maintenance of telephone lines in streets and other public places within the City and County of San Francisco and that therefore the City and County could not require Pacific to obtain a franchise or pay compensation for any of its franchise rights. This office made a motion for a new trial of the matter, which was denied, whereupon



it filed its Notice of Appeal. Preparation of the appellate brief and settlement of the transcript of this matter has already taken place, and the appeal will be heard during the ensuing year by the California Supreme Court.

An additional action was filed in the Superior Court by Pacific Telephone & Telegraph Company against the City and County of San Francisco and the San Francisco Unified School District on September 25, 1959, seeking the recovery of \$1,729,054.01 representing claimed telephone rates and charges which Pacific alleges are due to it for the period from October 3, 1956, to the date of the complaint. This matter arises out of the offset of telephone rates and charges as against the unpaid franchise liability of the Telephone Company accruing for its use of streets and other public places since the expiration of its prior franchise on October 3, 1956. An answer in this action has been filed by the City and County which pleads the said offset and other matters of defense.

The City and County has also filed a separate action in the Superior Court for recovery of the sum of \$2,763,270, or, in the alternative, the reasonable value of the use of streets and other public places by the Telephone Company, as compensation for said use by the Company during the 3 years since the expiration of the prior franchise. The Telephone Company has filed an answer to this complaint, and the matter is now at issue.

#### Litigation - Pacific Gas & Electric Company

In the course of the past year discovery, research and preparation of legal materials took place in regard to the case of Pacific Gas & Electric Company v. City and County of San Francisco, wherein the Company had filed an action in the Superior Court for \$81,830.32, the alleged cost to the Company of relocating gas and electric facilities in connection with the construction of Brooks Hall, the Civic Center underground exhibit hall. The City and County filed an answer maintaining that both generally and under its franchises Pacific Gas & Electric Company is obligated to relocate such facilities at its own expense.

#### Other Matters

In the course of the past year further study was conducted on such legal problems as the effect of the development of pay television in connection with the possible use of public streets for the transmission of same via a closed circuit system, and certain proposed statutory changes in regard to the relocation of utilities. Hearings of the Assembly Interim Committee on Public Utilities and Corporations were attended, and a presentation on the question of relocation was made on behalf of the Redevelopment Agency and the Water Department.

Work was also done in regard to the preparation of a standard form of permit for the granting of connections to the municipal fire alarm system to the various fire alarm companies which desire to maintain such connections.





## WORKMEN'S COMPENSATION LITIGATION

The Retirement System of the City and County of San Francisco, under Section 172 of the Charter, administers the benefit provisions of the workmen's compensation laws of the State of California with the City Attorney's office representing the City and County of San Francisco and the San Francisco City and County Employees' Retirement System in hearings and other workmen's compensation matters before the Industrial Accident Commission of the State of California.

The hearings generally fall into three categories:

1. Where the City denies liability for the alleged injury or denies that the injury occurred; or
2. Where the City contests that disability resulted from the alleged injury; or
3. Where the City contests the duration of the disability or amount of permanent disability alleged.

The City Attorney has appeared at fifty-three hearings, averaging 4.4 per month, in which testimony was taken or evidence presented on behalf of the City and the Retirement System. The hearings varied in length from one-half hour to three hours, averaging generally about one hour.

Matters which are decided by the Industrial Accident Commission are subject to petitions for reconsideration and to review before the District Court of Appeal. The City Attorney's office has filed seven petitions for reconsideration and four answers to said petitions filed by the respective claimants. All of the necessary legal papers and documents in connection with the hearings, petitions and answers are prepared in this office.

The City Attorney also represents the City and the Retirement System in the matter of subrogation of the claims of the Retirement System against a third party who has wrongfully caused injury to a city employee. In this way the Retirement System is often able to obtain reimbursement for the amount of compensation paid and medical expenses expended for the benefit of the employee as the result of his injury during the course and scope of his employment.

Where the injured City employee commences an action in his own behalf against the third party causing his injury, the City has the right to intervene in order that the benefits paid to the city employee because of his injury may be recovered. During the past year, we successfully completed one suit in intervention, have an additional suit, previously commenced, pending, and have one matter under consideration with a view toward intervening.



Where the injured City employee does not file suit on his own behalf, the City has the right to file an action in its own behalf against the third party causing the injury. In the past year, we have filed four independent suits with an additional suit, previously commenced, pending, and five matters under consideration with a view to instituting suit. Additionally, the City Attorney's office obtained reimbursement by way of settlement without litigation in four other subrogation matters.

On many occasions a lien has been successfully employed to obtain reimbursement, for and on behalf of the City and the Retirement System.

#### PUBLIC WELFARE DEPARTMENT

During the fiscal year 1959-1960, 58 cases were referred by the Public Welfare Department to the Office of the City Attorney, involving responsible relatives who refused to assume the obligation of contributing to the support of a recipient of Old Age Assistance. Of this group, 40 cases were successfully concluded during the fiscal year, 17 cases (of which 11 were referred to the City Attorney in the final month of the fiscal year) were pending as of June, 1960, and one case resulted in the filing of a suit against the responsible relative. At the beginning of the fiscal year, 17 cases were pending from previous years. Of these cases, 15 were successfully disposed of without filing suit, one case was still under negotiation at the end of the year, and suit was filed against the relative of the remaining case.

During the fiscal year, 121 cases were referred to the Office of the City Attorney due to the refusal of the responsible relative to submit a statement concerning his financial condition upon which the Board of Supervisors determines the extent of the monetary liability, if any, of the relative for the support of the recipient of aid. As of June, 1960, 99 of these cases had been terminated, and 22 cases, of which 12 had been referred during the last month, were pending.

During the first three months of 1960, at the request of the Public Welfare Department, a lecture course covering such subjects as Husband and Wife, Parent and Child, Community Property, Real Property, Wills, Conditional Sales Contracts, and Procedural Aspects of the Law, and consisting of 10 two-hour lectures, was prepared and given to the case workers of the Public Welfare Department by a member of the legal staff of the City Attorney's Office.





## CONCLUSION

You desired in addition to our general report that we answer the following:

### 1. Comment on the Progress of Capital Programs

This query will not apply to this department; hence, no comment.

### 2. Suggestions or Recommendations of City Attorney's Department or City Affairs Generally

#### (a) Inadequacy of Quarters

For many years past, I have reported to you on this subject and you are referred to those reports. You are aware we are occupying a considerable area that was formerly a corridor that permitted the general public to traverse around the second floor of the City Hall. This has been cut off from public use and a large portion of our staff and library, including the telephone operator and the reception counter, are situated in what is actually the corridor of the City Hall.

The present arrangement impairs badly the efficiency of the attorneys due to crowded conditions and the grossly inadequate space for stenographic and clerical forces and proper library facilities.

#### (b) Necessity for Increase of Staff

You are respectfully referred to my previous Annual Reports to you on this subject. The increase of business requires additional deputies to carry out the work of this office.

Recently, the Redevelopment Agency expressed itself as wishing to establish its own legal staff and having the staff answerable only to that commission. From the inception of the Redevelopment Agency, this office has represented them throughout all the years and has established them and the constitutionality of the act under which it operates before the California Supreme Court, as well as another case before the California Supreme Court that tested the legal adequacy of the act. We have done all the legal work for the Agency from its inception to date. If the deputies move over to the Redevelopment Agency they will no longer be deputies of this office. They will lose what retirement benefits they have accruing to them. You are aware the City, from a dollar standpoint, is liable for one-third of the cost of the projects undertaken by the Redevelopment Agency and hence it is



incumbent and our Charter requires that I have a representative participate in each of the eminent domain proceedings that I have heretofore instituted in the name of the Redevelopment Agency. It will result in a duplication of work. These suits involve many millions of dollars and the City cannot permit itself to go unrepresented in these proceedings when, as I have stated above, we are liable for one-third of what the outcome may be.

3. Comparison of Expenditures with Budget  
Appropriation for 1959-1960

It pleases me to report that this office stayed within the budget of 1959-1960.

4. Comparison of Revenues as Estimated  
in Budget of 1959-1960

The only revenues that the City Attorney's office received are interdepartmental transfers; and, funds for attorneys and stenographers paid by the Redevelopment Agency. It might be well to point out that this office was instrumental in collecting \$402,317.00 for the various City departments during the past fiscal year.

5. Comment on the Two Previous Items

I deem no comment is necessary.

6. Statistics on Work Accomplished

Throughout the report you will find certain statistics set out and I do not wish to overburden this report with additional statistics.

Respectfully submitted,

DION R. HOLM  
City Attorney

















